TRUSTS OF TO-DAY

GILBERT
HOLLAND
MONTAGUE

UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/trustsoftodayfac00montiala

TRUSTS OF TO-DAY

TRUSTS OF TO-DAY

FACTS RELATING TO THEIR PROMOTION, FINANCIAL MANAGEMENT AND THE ATTEMPTS AT STATE CONTROL

BY

GILBERT HOLLAND MONTAGUE. A.M.

OF THE DEPARTMENT
OF ECONOMICS, AND SOMETIME RICARDO
PRIZE SCHOLAR IN ECONOMICS AT
HARVARD UNIVERSITY

NEW YORK
McCLURE, PHILLIPS & CO.
MCMIV

T
M7603t
1904

Copyright, 1904, by
McCLURE, PHILLIPS & CO.

Published, March, 1904

337991 10 of 20
4-26-67

RDF 29 M.y 67

PREFACE

The speculative period of combination, during which one-seventh of the manufacturing business of the United States organised into consolidations, and four billion dollars of securities was marketed by the new industrial trusts, has entirely spent itself. Since 1898, the industrial stocks listed on the New York Stock Exchange have declined sixty-five per cent. The depreciation in the twenty-one leading industrial stocks has inflicted during this period a loss on the community of a billion of dollars. The precipitate decline of stocks during the summer and fall of 1903, the recklessness of unskilful promoters exposed in the hearings of the Shipbuilding Trust, and the passing of the common stock dividends by the United States Steel Corporation have completed the disillusionment of the investor. In the meantime, the Attorney-General's activity in the enforcement of the Sherman Anti-Trust Act, and the decision of the federal courts in the case of the Northern Securities Company have

called into greater prominence the regulation of trusts by the law. Economists and legislators have suggested a multitude of statutory remedies. The Industrial Commission, after careful investigation and criticism, recommended in its Final Report to Congress in 1902 certain specific measures. In 1903 Congress enacted, in the Elkins Law and in the Nelson Amendment to the Department of Commerce Act, two of the better recommended and less radical of these remedies. The acute realisation among investors of the real evils of trusts, and the sober criticism everywhere passed upon all suggestions of remedy mark the new phase of the trust situation.

The issues of the trust question are clear. If the trusts deserve to live, they must show that their economies are real; and that their evils—those resulting from monopoly, and also those resulting from the present trust management—can cure themselves or be cured by statute. Some of the facts, also, are clear. Economies arising from the control of resources—such as the International Paper Company expected from its monopoly of timber-land—have generally proved illusory. Combination as a relief from industrial warfare, however,—such as the United States Steel Corporation has been shown to be,—

has more firmly established itself as a natural economic evolution. Certain of the evils expected from monopoly, such as the discouragement of individual initiative, have not been realised. Certain other evils of monopoly, however, such as unreasonable prices and the extortion of discriminations from the railways, have grown more conspicuous. The evils of present trust management, moreover, which have brought discredit on a great field of industry have attained an importance transcending all other evils. How far these evils can cure themselves is now becoming evident. How far they can be cured by statute appears in the progress of the law from the overthrow of "trust agreements" to the case of the Northern Securities Company.

The facts of the trusts of to-day clearly define the trust problem. Most of the facts here given have been drawn from the Report of the Industrial Commission. A few illustrations of recent trust finance have been taken from the market reports and annual balance-sheets, published from time to time in the trade journals and in the *Commercial and Financial Chronicle*. The findings of fact in judicial hearings—especially in the suits to enjoin the bond conversion of the United States Steel Corporation—were freely

drawn upon for material. The utmost pains has been taken to exclude mere newspaper reports and magazine hearsay. Official and semi-official sources, though not abounding in startling generalisations, compensate in reliability for what they lack in picturesqueness. Wherever practicable, in the index, statements occurring in these chapters have been referred to the authorities. Certainly, the difficulties of the problem appear clearest in an impartial statement of the economies and the evils of trusts, and in a plain explanation of the legal regulation of trusts. If, indeed, from this treatment of the subject, certain critical conclusions seem reached, or some possible solutions seem evident, they result from the simple candour of the facts, and not from any conscious argument of the author.

GILBERT HOLLAND MONTAGUE.

CAMBRIDGE, MASSACHUSETTS.

CONTENTS

CHAPTER ONE

THE DEVELOPMENT OF INDUSTRIAL COMBINATION

PAGE

The Tendency to Combination in Large Businesses . . 4

Pools in the Whisky and the Oil Industries, . . . 5

The Weakness of Pools: Addyston Pipe Pool, 1897; Bessemer Steel Pool, 1896; Wire Nail Pool, 1895; Steel Rail Pool, 1897, ... 8

Combination through "Trust Agreement": Standard Oil Trust, 1882; Distillers' and Cattle Feeders' Trust, 1887; Sugar Refineries Company, ... 11

Combination through "Community of Interest": Standard Oil Interests, ... 15

Combination through Single Ownership in the Whisky Industry, ... 17

Combination through the "Holding Corporation": American Sugar Refining Company, 1891, ... 18

The Rush to Combination, 1897-1902: Distilling Company of America; Standard Oil Company of New Jersey; United States Steel Corporation, ... 22

The Decline in Industrial Securities: 65 per Cent. from 1898 till 1903, ... 28

The Evils of Industrial Combination: Evils Inherent in Practical Monopoly Harm the Consumer, the Competi-

PAGE

tor, and the State; Evils Arising from the Form of Trust Organisation Harm the Stockholder, . . . 30

The Trust Problem: If the Trusts Deserve to Live, the Savings of Combination Must be Found Real, and All the Evils Either Self-corrective or Capable of Correction by Statute, ... 32

CHAPTER TWO

THE SAVINGS OF COMBINATION

Combination Compelled by the Instinct of Self-preservation: United States Steel Corporation; American Tin Plate Company; American Sheet Steel Company, . . 36

The Savings in the Marketing of Product, that Result from Restricted Competition, ... 39

Fixing of Prices: National Salt Company; Distillers' and Cattle Feeders' Trust; Standard Oil Company, . . 41

Improved Position in Bargaining: the Factor System: American Steel and Wire Company; United States Rubber Company; General Aristo Company; Eastman Kodak Company; Pittsburg Plate Glass Company; American Tobacco Company; Continental Tobacco Company; Distilling and Cattle Feeding Company; American Sugar Refining Company, ... 43

Savings in the Sale of Output: Less Travelling Salesmen, and Concentration of Advertising: Distilling Company of America; United States Rubber Company; American Steel and Wire Company; National Salt Company; Royal Baking Powder Company; International Silver Company; American Chicle Company; National Biscuit Company; American Tin Plate Company, . . 48

PAGE

Economical Adaptation of Supply to Demand: American Thread Company; International Silver Company; United States Rubber Company; Distilling Company of America; American Sugar Refining Company, . 50

The Savings in Large-scale Production, that Result from Concentration of Capital, ... 51

Superior Opportunities for Borrowing: the Rockefeller and the Morgan Chains of Banks, ... 52

Improved Position in Dealing with Labour: American Smelting and Refining Company; United States Steel Corporation; National Wall Paper Company; Standard Oil Company, ... 55

Advantage in Buying Raw Material: American Sugar Refining Company; Standard Oil Company; American Thread Company; United States Steel Corporation, . 58

Improved Processes and Superintendence: Distilling Company of America; Standard Oil Company; American Steel and Wire Company; National Salt Company; Carnegie Company; United States Steel Corporation; Glucose Sugar Refining Company; American Tobacco Company; Continental Tobacco Company, ... 59

Continuous Operation of Mills, and Distribution of Orders: American Sugar Refining Company; United States Rubber Company; American Steel Hoop Company; United States Steel Corporation, ... 62

Strategic Location of Works: American Steel and Wire Company; American Sugar Refining Company; American Car and Foundry Company; Continental Tobacco Company; American Tin Plate Company; Republic Iron and Steel Company; Standard Oil Company, . . 64

The Two Tests of Trusts, ... 66

CHAPTER THREE

THE EVILS OF PRACTICAL MONOPOLY

PAGE

The Evils that Lurk in the Savings of Combination . . 69

The Control of Output and of Prices: United States Steel Corporation; American Sugar Refining Company; United States Rubber Company; American Tin Plate Company; American Steel and Wire Company; Standard Oil Company; International Paper Company; Pittsburg Plate Glass Company; National Salt Company; National Cordage Company, ... 71

The Ever-present Possibility of Competition: United States Steel Corporation; American Spirits Manufacturing Company; National Salt Company; Wire Nail Pool; American Sugar Refining Company; Distilling and Cattle Feeding Company, ... 75

The Treatment of Labour: Travelling Men's Protective Association; American Federation of Labour; Distillers' and Cattle Feeders' Trust; American Sugar Refining Company; Standard Oil Company; American Tin Plate Company; American Steel and Wire Company; International Silver Company; Federal Steel Company; Investigation of the Department of Labour, ... 78

Dominance through Trust-bargaining: American Sugar Refining Company; American Tin Plate Company; American Steel Hoop Company; Standard Oil Company; United States Steel Corporation, ... 82

Competition by Destructive Prices: American Sugar Refining Company; National Salt Company; Standard Oil Company; Mogul Steamship Company *vs.* McGregor, 84

PAGE

Special Favours from the Railroads: Standard Oil Company; Live-stock and Dressed Beef Combinations , . 88

The Effect on the Development of Talent: United States Steel Corporation; Conclusions of the Industrial Commission, 90

Railway Discrimination—the Ill that has Not Proved Self-corrective, ... 92

CHAPTER FOUR

THE EVILS OF PRESENT TRUST ORGANISATION

The Relaxation of Corporation Laws: Charter of the United States Steel Corporation, ... 95

Incorporation in "Charter-granting" States: New Jersey; Delaware; West Virginia; Corporation Trust Company of New Jersey; New Jersey Corporation Guarantee and Trust Company; New Jersey Registration and Trust Company; Corporation Trust Company of Delaware, . 98

The Task of the Promoter: Judge William H. Moore; American Tin Plate Company; American Potteries Company; Pittsburg Plate Glass Company; American Sugar Refining Company; Distillers' and Cattle Feeders' Trust; Standard Distilling and Distributing Company; International Silver Company; National Shear Company; United States Rubber Company; National Salt Company; International Paper Company; National Biscuit Company; National Steel Company; American Steel Hoop Company; United States Steel Corporation; Continental Tobacco Company, ... 101

The Work of the Underwriters: J. P. Morgan & Co.; Standard Distilling and Distributing Company; National

PAGE

Shear Company; Federal Steel Company; United States Steel Corporation, ... 105

Capitalisation Based upon Earning Power: Porto Rican Corporation Act; Pittsburg Plate Glass Company; American Chicle Company; American Sugar Refining Company, ... 107

Over-capitalisation Measured by the Stock Market: United States Leather Company; United States Steel Corporation, ... 110

The Decline in Industrials: 1898-1903: Distilling Company of America; Distillers' and Cattle Feeders' Trust; United States Flour Milling Company, ... 115

The Exaggeration of Trust Savings: International Paper Company; United States Steel Corporation, ... 117

The Neglect of the Surplus Reserve: United States Steel Corporation, ... 119

Excessive Dividends and Floating Debt: American Ice Company; United States Rubber Company; International Paper Company; American Malting Company; American Linseed Company; International Silver Company; Pressed Steel Car Company; United States Steel Corporation, ... 121

The Distrust of the Investor: the Demand for Railway Securities and the Apathy for Industrials, ... 125

CHAPTER FIVE

THE HISTORY OF ANTI-TRUST LEGISLATION

At Common Law, Agreements in Restraint of Trade were Unenforceable, and Monopoly was Criminal, . . . 128

PAGE

State Anti-Trust Laws Neutralised by the "Charter-granting" States: Anti-Trust Legislation of Thirty States and Two Territories Neutralised by the Lax Corporation Laws of New Jersey, Delaware, and West Virginia, . 130

The Federal Anti-Trust Act of 1890, ... 133

The Ill-success of State and Federal Anti-Trust Laws: Illinois; Missouri; New York; Texas; Unconstitutional Legislation of Illinois, Texas, Georgia, Indiana, Louisiana, Michigan, and Tennessee, ... 134

The Disappointing Results of the Federal Anti-Trust Act: Opinion of the Attorney-General, 1893; the Knight Case, 1895; the Freight Association Cases, 1897-1898; Cases of the Live-stock Associations, 1897-1898; Case of the Addyston Pipe Pool, 1897; Opinion of Attorney-General Knox, 1902, ... 138

The Evolution of the Common-law from Loose Combination to Single Ownership: the Case of the Cotton-seed Oil Pool, 1888; the Case of the Sugar Trust, 1890; the Case of the Chicago Gas "Holding Corporation," 1889; the Case of the Potteries "Holding Corporation," 1898; the Case of Single Ownership of Match Factories, 1889, ... 143

The Futility and Laxity of State and Federal Legislation: Report of the Industrial Commission, 1902, . . . 147

The Activity of Attorney-General Knox: Railway Discriminations in Grain, Packed Meats, and Cotton, 1902; the "Beef Trust," 1902; the Merger of the Great Northern and the Northern Pacific Railroads in the Northern Securities Company, 1902, ... 149

The Failure of Old Remedies and the Need for New, . 151

The Recommendations of the Industrial Commission and

PAGE

of Attorney-General Knox: 1902-1903: Amendment of the Interstate Commerce Act; Elkins Law, 1903; Prosecutions under the Interstate Commerce Act and the Sherman Anti-Trust Act, 1903; Publicity for Trusts Engaged in Interstate Commerce; the Nelson Amendment, Creating the Bureau of Corporations, 1903; Reluctance to Follow the More Radical Recommendations, 153

The Decision of the Northern Securities Case, 1903: Upon Essentially Common-law Principles, a Monopoly or Combination in Restraint of Trade Through a "Holding Corporation" is Held Illegal, ... 157

CHAPTER SIX

THE OUTLOOK FOR TRUST REGULATION

Interstate Commerce is Controlled by the Federal Government, and State Commerce is Controlled by State Governments: the Faint Line of Demarcation, . . 162

The Proposed Statutory Remedies, ... 164

Constitutional Amendment Placing all Commerce under the Power of Congress: Recommended by the New York Trust Committee, 1897, and by Congressman Jenkins, Chairman of the House Judiciary Committee: Criticised by the Industrial Commission, . . . 164

The Extension of State Control over Interstate Commerce: Criticised by the Industrial Commission, . 166

The Enlargement of the Power of Congress over Interstate Commerce: I. The Exclusion of Trusts from Interstate Commerce: Recommended by Attorney-General Knox, Congressman Littlefield, and Senator

PAGE

Hoar; Criticised by the Experts of the Industrial Commission. II. The Taxation of Trusts upon Their Interstate Business: As a Measure of Publicity, its Object has been Partly Attained Already in the Nelson Amendment, 1903; Criticised by the Experts of the Industrial Commission. III. Permissive Federal Incorporation Laws for Companies Engaged in Interstate Commerce: Recommended by Mr. James B. Dill and the Experts of the Industrial Commission, . . . 168

The Continuation of the Present System of Control by State and Federal Governments: I. The Prohibition of Underselling in Competitive Markets: Recommended by the Industrial Commission, Attorney-General Knox, Professor John B. Clark, Senator Hoar; Criticised by the Experts of the Industrial Commission. II. The Effect upon Trusts of Reducing the Tariff: Conclusions of the Industrial Commission and of President Roosevelt; Export Prices Lower than Domestic Prices: United States Steel Corporation; American Tobacco Company; Sloss-Sheffield Iron and Steel Company; Jones & Laughlin Limited; International Paper Company. III. The Enforcement of Publicity: Partly Attained in the Nelson Amendment, 1903; Recommended by Congressman Littlefield, the Federal Steel Company, and the American Sugar Refining Company. IV. The More Effectual Prevention of Railway Discriminations: Increased Penalties for Discrimination, and the Legalisation of Railway Pools: in Part Attained in the Elkins Law, 1903; Recommended by Senator Cullom, the Industrial Commission, and Attorney-General Knox. V. The Improvement of State Corporation Laws:

PAGE

Business Companies Act, Proposed in New York, 1900, by Governor Roosevelt; Corporation Law of Massachusetts, 1903; Recommendations of the Industrial Commission, ... 171

The Proposed Statutory Remedies, Arranged in Order of their Application, and Compared as to Efficiency, . . 194

A Possible Remedy in the Law of Public Service Companies, Declaring the Larger Trusts Quasi-public Businesses, and Requiring them to Sell to All, in Adequate Quantities, Without Discrimination, at a Reasonable Price, . 196

The Hopeful Outlook for Trust Regulation, . . . 199

TRUSTS OF TO-DAY

CHAPTER ONE

THE DEVELOPMENT OF INDUSTRIAL COMBINATION

Competition is proverbially the life of trade; but, from the standpoint of the seller, it has always been the death of profits. In spite of the efforts of legislatures and of markets, from mediæval times to the present, to keep alive competition in every community and in every business, the seller still tries to restrain it. Even among the tradesmen of a small community the tendency is eternally at work. The local grocer and the dry-goods dealer each notes the prices of his competitor's goods and makes his similar. From time to time he marks down the prices of a few articles, trusting that the increased patronage induced by the blazoning of these "leaders" may increase the sales throughout his store. Aside from these occasional cuts, which seldom affect a considerable fraction of the business, tacit and informal agreement everywhere restrains competition in retail markets.

THE TENDENCY TO COMBINATION IN LARGE BUSINESSES

In the wholesale trade, however, competition is always more troublesome. Compared with retail consumers, the wholesale buyers are more eager for small savings, better acquainted with the conditions determining prices, and shrewder at driving hard bargains. The wholesale sellers, because their stocks are necessarily less various than those of retail shopkeepers, can less easily recoup on the rest of their business what they lose by unremunerative "leaders"; and because their trade is more wary than the untutored public, must exert proportionately greater efforts in marketing their products. In good times and in bad they must command the attention of the trade by expensive advertising in the public prints, in street cars and on billboards, and by persistent canvassing by highly paid commercial travellers. In order to hold his customers during a season of reduced demand, the manufacturer must make burdensome concessions: he must pay freight instead of shipping F. O. B.; he must grant net cash ninety days instead of net cash thirty days; he must allow cancellation or modification of orders, and a discount for storing the goods in the buyer's wareroom, and must un-

complainingly allow excessive claims for lack of merchantableness. Lest his business go over to his rival, when trade picks up and prices advance, the manufacturer must contract with his buyer twelve or eighteen months ahead, at the low prices current at the moment the market begins to turn. As a result, during the first year or two of advancing prices the producer realises far less than the "current price for immediate delivery" —with its illusion of extraordinary profits— seems to promise. In November, 1899, for instance, while steel billets were quoted at $34, the mills were chiefly occupied in filling contracts at $16. Finally, when the time arrives for making new contracts, the buyer and the seller cannot get together on the current price, and in order to dominate his territory the seller is once more obliged to grant a reduction. And no sooner does he attain his dominance than his competitor five hundred miles away reaches in with advertising and with agents and with more attractive terms.

THE POOLS IN THE WHISKEY AND THE OIL INDUSTRIES

Among producers and wholesale sellers, accordingly, something more tangible than tacit, infor-

mal agreement is needed to restrain competition. So long as industry was localised by imperfect transportation and by the relative smallness of capital invested, formal combinations were as unnecessary among manufacturers as they are generally among shopkeepers. With the rapid development of business after the Civil War, however, together with the extraordinary stimulus given to certain lines of industry—by internal-revenue legislation, for example, in the case of the manufacture of spirits, and by the discovery and the utilisation of petroleum in the arts—came all the distressing effects of acute competition among manufacturers. The spirits business had attracted such a large sum of capital that the producing capacity grew far beyond the country's normal demand. To dispose of surplus stock, prices were cut until the business became notoriously speculative and discredited; booms and depressions, due sometimes to changes of the law, but chiefly to the accumulation of stocks of whiskeys, made and ruined, with every shift of trade, hundreds of distillers. With a view to placing the business on a sound basis, combinations of seventy or eighty distilleries, organised to reduce the output, were formed as early as 1882. The Western Exporters' As-

sociation, for example, determined the producing capacity of each distillery and distributed to each its pro rata share of the consuming capacity of the country. Sometimes only twenty-eight per cent. of the producing capacity was thus utilised, and seldom was more than forty per cent. required. Distilleries producing an excess were obliged to export from the country at their own cost, and any fortuitous excess was exported at the expense of the association and the loss met by assessment. By a similar development the petroleum industry had even earlier attained the same form of combination. Further discoveries of petroleum in 1865, like the internal-revenue legislation in the spirits business, over-stimulated production; and throughout the next decade there were abortive attempts to regulate the output of oil. Early in the seventies the more important refiners, under the leadership of Mr. John D. Rockefeller, reached an informal agreement regarding prices and had come to be known as the Standard "alliance." After eliminating competition among its own members, the group availed itself of the peculiar railway conditions of the time to assert its dominance over the trade. Railroads had not as yet consolidated, and competition for traffic at

common points was excessive and unprofitable. To save themselves from insolvency the railroads agreed with one another and with large shippers to divide the traffic, and to pool on agreed percentages the freight earnings. The Standard "alliance," being the most conspicuous group of shippers in the trade, was in this way generally made the "evener"; and in return for this service obtained from the railroads such concessions as raised it, in 1879, to dominance in transportation facilities and to the control of ninety-five per cent. of the refining business of the country.

THE WEAKNESS OF POOLS

The purpose of the pool, as shown in the experience of the distilling and refining industries, is to regulate prices and to meddle as little as possible with details of management in the constituent companies. The output of each concern is so restricted that prices may be advanced by limitation of the supply. The prices are determined at a meeting of all the members of the association or by the executive committee of the pool; and the buyer, being held to the regular quotations, is unable to play off one competitor against another or to obtain special concessions.

In the Addyston Pipe Pool of 1897 the manufacturers of cast-iron pipe in thirty-six States agreed not to compete with one another; whenever a consumer called for bids a committee of the pool, made up of representatives of each mill, set the price for the job and assigned the contract to the mill that gave the largest bonus for it; to keep up an appearance of competition the other members of the pool put in higher bids. The Bessemer Steel Pool, organised in 1896 and including most of the manufacturers of crude steel in the Middle West, assigned every month to each mill a fraction of the total output of the association. At the end of each month, when the shipments were reported to the central advisory body, any mill which had exceeded its allotment was required to pay into the common treasury $2 per ton for such excess, which was distributed proportionately among those who had not shipped their allotment. In the Wire Nail Association of 1895 the central body fixed prices and allotted the output; and in times of slack demand the output was produced by a few of the best adapted plants, and the others received a certain rental for keeping out of business. By its very nature, however, this form of organisation is weak. The policy of the pool is determined by majority rule;

and, as each producer is concerned only with the immediate future, the management of the association seldom takes a broad view of the situation. In the midst of a general decline in prices the Wire Nail Association raised prices 200 per cent. Similar short-sighted extortion in the whiskey pools time and again broke down the market. The necessity of voluntary assent on the part of each member and the liberty of each to withdraw without notice have made it impossible to enforce pooling agreements. No relief is to be had in the courts. By one of the firmest principles of the common law a pooling agreement which actually controls the market is unenforceable because it restrains and tends to monopolise trade. In addition to the common law, the Sherman Anti-Trust Act of 1890—as the Addyston Pipe Pool learned to its sorrow—expressly forbids, with forfeiture of property and threefold damages, every restraint of trade, reasonable or unreasonable, between the States. The difficulty of establishing relations of mutual confidence among former competitors emphasises all these defects. A small misunderstanding creates mutual distrust. Strong producers are always suspected of obtaining business beyond their allotments by methods contrary to the spirit, if not

the letter, of the pooling agreement. Having pooled and allotted the production of crude material, these producers increase to the utmost their output of finished goods and thus evade the calculations of the pool. From all these causes the dissolution of pooling agreements is periodical and anticipated by the trade. As the prices following the breakdown of the pool are often lower than the prices current before the pool, large buyers have been accustomed to wait till the dissolution before placing their orders. In February, 1897, owing to the dissatisfaction of the Lackawanna Iron and Steel Company with its allotment of seventeen per cent. of the output and the demand of the Illinois Steel Company for the territory west of Pittsburg, the Steel Rail Pool dissolved; and steel rails, which before the pool had sold at $21 per ton and during the pool at $27.50, were offered by the Carnegie Company at $17 per ton.

COMBINATION THROUGH "TRUST AGREEMENTS"

The managers of the Standard "alliance" early discovered that pools regarding prices and output did not give sufficient power, either to control the market or to secure the most efficient

methods of production. Consequently this association devised and put into effect, in 1882, the original "trust agreement" of the Standard Oil Trust—the first attempt to give binding legal obligation to the unenforceable agreements of the pool—which has since lent its technical name to the entire class of the industrial combinations. A board of nine trustees received in trust from each of the parties to the "trust agreement" either an assignment of stock with voting power or, in some other form, the absolute control of the separate properties. The trustees issued in return for these assignments "trust certificates" representing the valuation of the plants. Except for three or four shares left with the officers of each corporation to qualify them as directors, the trustees could vote all the stock of all the committees. They elected from their own number the directors of each constituent company and thus managed all the properties in complete harmony. As stockholders of the companies composing the trust, the trustees collected all the dividends, and distributed the gross sum among the holders of the "trust certificates" in the form of dividends on the certificates, regardless of whether the original property for which one had received "trust certificates" was making profits or was idle.

Success in harmonising divergent interests in the refining business led to similar arrangements in other industries. In 1887 eighty distilleries which had previously maintained a precarious association in pools united for more perfect union into the Distillers' and Cattle Feeders' Trust; and soon after the Sugar Refineries Company was organised.

As a device for controlling the market and for securing the most efficient production, the trust was thus far the most practical form of combination. Through the board of trustees the control over the constituent companies was no longer persuasive but legally enforceable; and measures too drastic to be assented to by informal agreement could easily be accomplished by the trustees in the exercise of their legal rights. Immediately after the formation of the Distillers' and Cattle Feeders' Trust, out of eighty distilleries which joined all were closed except the twelve largest and best equipped, which ran at full capacity. The Standard Oil Trust dismantled such of its refineries as were poorly located, improved the equipment of the rest, and built new works at strategic positions commanding the markets of the entire country. Since these combinations were unincorporated there was no

means by which outsiders could learn the nature of their business. They were permanent in organization, centralised in government, responsible and representative; and, being permanent and responsible, they pursued a broader policy than did the pool. Excepting the Distillers' and Cattle Feeders' Trust, no trust exacted the extortionate prices demanded by the pools: the Standard Oil Trust effected a steady reduction in prices; the Sugar Refineries Company raised prices above the competitive rates which before the trust was formed had ruined eighteen out of forty refiners, but maintained them at a point no higher than English and Continental prices. In ease of organization and efficiency of administration the trust form of combination has always supplied the most satisfactory restriction of competition. Economically and commercially it is a unit—and therein lies its strength; legally, however, the trust is not an entity but an association of persons. A rancorous legislature, merely by enacting that any combination of individuals to restrain trade shall be forbidden, could make the "trust agreement" not only unenforceable—as were the pooling agreements—but also illegal and penal. In 1890 sixteen States had thus forbidden combinations within their borders; the

Federal Government by the Sherman Anti-Trust Act had forbidden combination in interstate trade, and the common law, as generally applied throughout all the States, was also understood to forbid such combination. During that same year the Sugar Refineries Company was declared illegal by the New York courts, and two year later, when the Standard Oil Trust was similarly declared illegal by the Supreme Court of Ohio, it became realised that the trust form of combination must be abandoned.

COMBINATION THROUGH "COMMUNITY OF INTEREST"

The dissolution of the "trust agreement," unlike the breakdown of the pools, was not followed by cut-throat competition. The members of the combinations had too long enjoyed the sweets of restricted competition ever to relapse again into their former condition. In one form or another of association the constituent companies continued their harmony of management. Since both pools and "trust agreements" were forbidden, the lawyers were thrown back on other devices. The Standard Oil Trust was dissolved in 1892, and in surrendering their "trust certificates" the owners were given a proportionate amount of stock in

each of the constituent companies. By chance the nine trustees under the original agreement owned in their own right a majority of the "trust certificates," and under the new arrangement, by voting together, could control each particular company of the trust. Furthermore, the years of association with one another in the earlier Standard "alliance" had brought about in these men a remarkable singleness of interest and purpose. The experience of most pools proves that mutual self-interest and friendship of a group of business men is an unstable foundation for common action. Among the nine men controlling the Standard interests, however, the ties of family, of personal regard, and of long and close association proved sufficient. For seven years that intangible bond which has become known in the operation of railroad systems as "community of interest," held together the strongest combination of industry in the United States.

Community of interest, however—as appeared in 1901 in the struggle for the Northern Pacific Railroad—is generally precarious. The same self-interest that one day brings men together is likely on another day without warning to leave them far apart. Only by an unconditional surrender of control to some central body can an

enduring union be reached; and as the law forbade such a union, so long as its members retained their legal entity, the most natural substitute seemed to be a new corporation which should buy the properties of the smaller companies and sink their legal existence in its own. In 1890 the Distillers' and Cattle Feeders' Trust, which had feared hostile treatment in the courts, reorganised under the corporation laws of Illinois as the Distilling and Cattle Feeding Company. Of the $35,000,000 of capital stock all but $1,000,000 was turned over to the owners of "trust certificates" in payment for the properties of the trust. Shortly afterward, on account of an Illinois statute forbidding payment for properties in stock instead of in money, the new corporation was declared illegal. A new company, the American Spirits Manufacturing Company, was accordingly formed, into which the stockholders of the unlucky Distilling Company transferred their stock, and from which they received, dollar for dollar, new shares. In order to control the distributing business, this company in 1896 organised the Spirits Distributing Company, and soon after sought to combine a number of outside distilleries in the Standard Distilling and Distributing Company and the Ken-

tucky Distilleries and Warehouse Company. By these devices was continued the consolidation of the distilling industry.

COMBINATION THROUGH "HOLDING-CORPORATIONS"

There remained one form of combination more attractive than either community of interest or outright purchase of the properties. In many particulars it resembled the old "trust agreement"; but there were sufficient points of difference to convince most lawyers that it was quite legal. The "trust agreement" had failed because it was a "conspiracy" of several persons. If, instead of a combination of persons, a single person could control the several companies, this difficulty could be avoided. The more careful promoters after creating this legal entity—the Distilling and Cattle Feeding Company, for instance—caused it to buy outright the works of the constituent concerns. The more venturesome organisers, however, regarded such complete absorption as unnecessary. A private individual, by owning a majority of the stock in two companies, might elect directors who would effect a unity of management. Why not, then, create a legal person—a giant "holding-corpora-

tion"—who should purchase a voting majority of the stock of the several concerns; whose directors, having been elected as usual by the shareholders of the giant corporation, should vote in the meetings of the component companies, precisely like the trustees under the "trust agreement"; who might thus bring about permanent harmony of control? This device had patent advantages over an outright purchase of the properties. The charter of many business corporations—as is wellnigh universal among railroad charters—forbade the sale of the entire business properties; the effect of which was, of course, to make complete absorption impossible. Furthermore, in the sale of plant and goodwill, the higgling of owners and stockholders over the price is for the promoter both expensive and exasperating. To go into the market and buy the voting majority of the stock is quicker and generally less expensive. If desired, the buying may be concealed under the usual daily trading in the stock, and the unsuspecting owners will not be prompted to hold off for an exorbitant price. Finally, the capital of the "holding-corporation" need not be so large, or so difficult to raise, as that of the corporation which purchases properties. Assuming the voting control of the constituent com-

panies to vest in a bare majority of their stock and their shares to be at par, a "holding-corporation" of $501,000 paid-in capital could as effectively control companies whose aggregate capitalisation was $1,000,000 as could a corporation of $1,000,000 by outright purchase of the properties. In an actual case like the preceding the exorbitant prices—either in money or in stock—which the owners would demand for their properties and the unfavorable rates at which the new stock must be placed on the market in order to provide means of payment, would require for an absorbing corporation a capitalisation greatly in excess of $1,000,000. All these disadvantages in absorbing corporations and advantages in "holding-corporations" induced most combinations to assume the latter form.

Before 1889 the laws of no State authorized the creation of a "holding-corporation"; the purchase of stocks of other companies was not considered a desirable power, and, excepting private individuals, no legal person could exist for the general purpose of owning property in other corporations. In 1889 New Jersey supplied the want by including among the lawful objects of corporations the purchase of stock in any companies owning, mining, manufacturing, or pro-

ducing materials or other property necessary for their business, and the issue of stock in payment therefor. According to the comity among the several States guaranteed by the Constitution, this new legal entity could extend its operations throughout the whole United States. For a small franchise fee New Jersey offered to provide all comers with this convenient legal person. Connecticut, Delaware, and, with slight reservations, New York and West Virginia followed the example. The Sugar Trust was among the first to avail itself of the New Jersey law. On the dissolution of the Sugar Refineries Company, in 1891, the "trust certificates" were exchanged, share for share, for the stock of the American Sugar Refining Company. Every whit as effective as the "trust agreement"; and after a narrow decision of the United States Supreme Court—in a case to test the applicability of the Sherman Anti-Trust Act to the American Sugar Refining Company * — generally regarded as immune from every law against combinations on both State and Federal statute-books, this form of combination promised shelter against ruinous competition within and hostile legislation without.

* United States *vs.* E. C. Knight Co., 156 U. S. 1 (January, 1895).

THE RUSH TO COMBINATION

1897–1902

The depression following 1893 retarded consolidation. But when the revival came, in 1897, an unprecedented rush to combination began. With the large harvests of 1898 and steadily rising prices the prices of securities rose. To the clamorous desire of producers for combination was added an artificial stimulus even more potent. Capital which had long held aloof from the investment market returned to find the supply of securities inadequate to the demand. The old standard stocks, which for so long had been the playthings of speculation, were now in the strong hands of investors beyond the reach of the professional stock-operator. If the increasing desire for speculation were to be satisfied there must be provided new counters for the game. The promoter who in ordinary times found his reward among the manufacturers whom his combination saved from competition, now made, in addition, a most extraordinary profit in supplying securities for the market. In almost any association of separate businesses insuring partial or complete control of the industry the control of the output and the economies of production promise

an increased profit; and when the big corporation is formed this increased earning capacity may as fairly be capitalised as the inventory-value of the plants. The promoter, however, tempted by the gullible demand for mere quantity in the stock-offerings, used the undoubted economies of combination as the basis for an enormously inflated issue of stock. Very few of these corporations had a capital of less than $1,000,000; the great majority had a capitalisation exceeding $5,000,000. Before 1897 only sixty-three of these combinations had been formed; in the next three years 183 were organised—seventy-nine in the year 1899 alone—with a total capitalisation of over four billions of dollars. This enormous sum—one-twentieth of the total wealth of the United States, nearly twice the amount of money in circulation in the country, and more than four times the capitalisation of all the manufacturing consolidations organised between 1860 and 1893—was owing entirely to the fever of speculation which culminated in the short panic of May, 1901.

The anxiety of manufacturers to avoid competition, the frenzy of speculation in the security market, and the facilities afforded by new corporation laws in a "holding" or absorbing cor-

poration conspired to bring about consolidation in almost every industry. Wherever a semblance of monopoly could be obtained a promoter was ready to organise, and the public was eager to buy his securities. In rapid succession the various branches of the steel business were combined in purely "holding-corporations." In 1899 the Distilling Company of America was incorporated in order to purchase a controlling interest in the stocks of the four existing combinations in the whiskey business. For this purpose capital stock to the amount of $125,000,000 was authorised, $80,000,000 of which was placed in the hands of the promoters to acquire the entire stock of each company, with the condition that if any part of such stock could not be acquired a proportionate number of the shares entrusted to the promoters should be returned to the treasury of the new company. In fact, the promoters purchased about ninety-five per cent. of the stocks of the several combinations. The mode of payment, which was fixed by a committee of the promoters and the large stockholders of the existing combinations, followed the general plan of a merger. For every preferred share of the American Spirits Manufacturing Company fifty per cent. in preferred stock of the Distilling Company of

America was allowed, and for the common stock twenty-five per cent. in common stock of the new company; for Kentucky Company common stock, seventy per cent., and for preferred stock, eighty-five per cent. in preferred and fifteen per cent. in common; for the Standard Company preferred, eighty-five per cent. in preferred and fifty per cent. in common, and for common sixty per cent. in common; for the Spirits Distributing Company first preferred, eighty per cent. in preferred and twenty per cent. in common, and for the second preferred, twenty per cent. preferred and twenty per cent. common. Like all "holding-corporations," the Distilling Company of America was authorised to acquire properties as well as stock. Accordingly, the promoters sold on the market enough of the stock in their hands to net $3,500,000 cash, $2,000,000 of which they used in the purchase of three independent distilling properties, and the remainder they turned into the company for working capital. So attractive appeared this new form of combination that in 1899 the Standard Oil combination, which had cautiously clung to the informality of community of interest since the "trust agreement" of its own contriving had gone awry, ventured to avail itself

of the New Jersey law. The old Standard Oil Company of New Jersey was granted enlarged powers and an increase of stock from $1,000,000 to $110,000,000. Its purpose was eventually to take all the stock of the different Standard interests into the larger company, so that, when the transfer was finally complete, the Standard Oil Company of New Jersey might own outright the stock or the properties commonly known and mentioned together as the Standard Oil Company. Since 1900, about $97,000,000 of the capital stock of the New Jersey company has been used to purchase at par the stocks or properties of the other Standard companies, the capitalisation of which was approximately $97,000,000, but whose goodwill and earning power as represented by the market value of the stock aggregated $650,000,000. The same principles of merger and of outright purchase appeared in the United States Steel Corporation, organised in 1901 with a capitalisation of $1,404,000,000 for the purpose of acquiring the stocks of ten of the largest corporations in the world. By 1901 a sufficient number of combinations had been incorporated to familiarise the public with their organisation. In the opinion of the legal profession at large, and among public prosecutors

generally, the difficulties of the anti-trust laws had been surmounted. A certain amount of doubt—which has lately been strengthened by the decision against the Northern Securities Company—still attached to the principle of combination by mere ownership of stock through a "holding-corporation," but in most cases—railroads everywhere were the great exception—their charters allowed the constituent companies to consolidate and the "holding-corporation" to buy either the stock or the properties. A considerable body of judicial decision, particularly clear in New Jersey, where alone the question was likely to arise, held in effect that combination through ownership of the properties was unassailable. The ease of changing, whenever convenience demanded, from a holding to a purchasing corporation afforded, accordingly, a security which no attack on the principle of merger seemed likely to threaten. To the heated imagination of the public, meanwhile, the profits of combination seemed enormous. During the depression after 1893, it was remembered, the combinations in steel, in oil, in rubber, in sugar, and in tobacco were scarcely inconvenienced; during this period the dividend of the Standard Oil Company had grown from twelve per cent. to

forty-eight per cent. Controlling the output of staples for which the demand could never entirely abate, and relieved from the hardship of competition, these companies enjoyed a conspicuous prosperity. The economies of combination, as both manufacturer and public were aware, lay chiefly in the control of the market. The promoter found the manufacturer weary of competition and eager either to combine or to sell; he found the public clamorous to capitalise visionary profits of combinations and to buy the shares as fast as he could provide them. With such incentives it is not surprising that in the four years ending in 1901 he succeeded in consolidating one-seventh of the manufacturing interests of the country.

THE DECLINE IN INDUSTRIAL SECURITIES

1898–1903

The year 1901 marks the second period of flood-tide in the trust movement. The first had occurred fifteen years before, when the example of the Standard Oil "trust agreement" had been followed in the sugar and the whiskey businesses. Hostile legislation, expressed in anti-trust statutes on State and Federal statute-books, obstructed the course of combination in the late

eighties and early nineties. The disillusionment of the public in regard to the securities of the new combinations has for the present stopped the wild rush to consolidation. The very years that have seen an increase in the value of established railroad stocks of more than one hundred per cent. have witnessed in the industrial stocks listed since 1898 on the New York Stock Exchange a steady depreciation of sixty-five per cent. The decline in the stocks of twenty-one leading industrials alone has inflicted during this period a loss on the community of a billion of dollars. In every case these losses represent the discrepancy between the promise and the performance of the anticipated profits of combination over competition. The evils which in the early nineties led to the restriction of the trust movement affected the consumer, the competitor, and the State—in short, the entire community outside the trust. But the ills which at present are emaciating the great industrials are internal; the evils of unscrupulous promotion, over-capitalisation, and bad management fall upon the individual stockholders, and only indirectly affect outsiders and the State.

The steps that have led to the present situation are clear. Loose association among producers

in specially stimulated industries after the Civil War led throughout the later seventies to pools for the regulation of prices. The device of the "trust agreement," which gave legal force to combinations illegal as pools, was eagerly adopted throughout the eighties and early nineties by the consolidating industries. When the "trust agreements" had been declared illegal, and the statutes against combination were growing more harassing, a few commercial States relaxed their corporation laws and created enormous business companies—henceforward known as trusts—which absorbed the members of the combination by the purchase of their properties or their stock. An unparalleled period of speculation in the four years following 1897 stimulated trust promotion, until in 1901 one-seventh of the manufacturing industry had been consolidated.

THE EVILS OF INDUSTRIAL COMBINATION

The evils of industrial combination, as they have shown themselves in the development of the trust and as they exist to-day, arrange themselves in two classes. First, those inherent in combination, however it be conducted, because of the mere fact that it is a practical monopoly. Most famil-

iar of these is the temptation to raise prices, to get secret discriminations from railroads, to fix destructive prices in order to crush smaller rivals, to corrupt legislation, and to depress individual initiative. Since the regin of Elizabeth, every English-speaking jurisdiction has enforced laws directed against these evils. The fact that monopoly threatens everyone outside itself—consumer, competitor, and employee—has for three hundred years raised against it the hand of the State. It is only natural that the first protest in the late eighties against trusts should be the restatement, with stricter prohibition, of the common-law abhorrence of monopoly. In the present situation, an easy device for evading the statutes has left the first class of evils as alarming as ever, and has added another sort, at present and in the immediate future likely to be more ruinous than the first. This second class of evils results from the particular form and method of organisation prevalent in existing combinations. Unscrupulous promotion, over-capitalisation, and bad management, which have notoriously resulted in financial discredit, affect primarily the investor; and, in so far as present forms of organisation make it difficult to enforce the law upon an elusive citizen, they also affect the State.

THE TRUST PROBLEM

Briefly stated, the trust problem resolves itself into this: If the trust deserves to live, the savings of combination must be found real and legitimate; the first class of evils, flowing from the mere fact of monopoly, must be proved either self-corrective or able to be corrected by statute; the second class of evils, resulting from the particular form assumed in the organisation of existing combinations, must be shown to be self-corrective or capable of correction by statute. The extended bearings of the problem have only gradually been realised. Till 1902, interest was centred upon the prevention of the first class of evils. The statute-books bristled with laws against combination and monopoly, but not a single remedy was attempted for the second class; indeed, certain "charter-granting" States had hastened to remove such protection against these evils as their early corporation laws afforded. Since the publication in 1902 of the report of the Industrial Commission, and since the decline in industrial securities, interest has centred about the second class of evils. As the difficulties of the problem become more clearly defined, suggestion grows more sober and cautious.

The commercial forces and the governmental principles, which together form the sinew and the nerve of the nation, are seen to be involved in the answer. By realising the transcending importance of the situation, the first step toward its solution has been taken.

CHAPTER TWO

THE SAVINGS OF COMBINATION

If the trusts deserve to live, the savings of combination must be found to be real and legitimate. Industrially, no new form of business organisation can endure unless it be more efficient—in plain terms, more economical—than the old. Politically, no new form of business organisation, which so radically substitutes the old as the trust supplants competing concerns, can be tolerated unless its economic advantages be manifest. From whatever standpoint the problem be approached, then, the economies of trust management must first of all be determined.

The savings of combination, which the promoter attractively sets forth in the prospectus, are not invariably the savings that induce manufacturers to join in the trust. Dread of arousing the wellnigh universal hatred of monopoly causes a labored stress to be put upon savings in clerk-hire, in travellers' expenses, and in adver-

tising—briefly, upon the ordinary economies of production on a large scale—and very little to be laid upon the really legitimate profits of restricted competition. The manufacturer knows that from the industrial standpoint the trust idea of controlling the market is fundamentally sound; but the reason for his faith is commonly expressed in innuendoes, stifled by exaggerated emphasis upon the advantages of large scale-production. Neither the public nor the promoter believes that the millions of dollars of industrial common stock are the capitalised savings in cross-freights and in advertising. These items, of course, contribute to the sum of increased earnings. They constitute, as will later be shown, an undoubted justification for the trust form of industry. But from what has appeared in the development of industrial combination they seem seldom to afford the motive for the formation of any trust. In most cases the real motive has resulted from conditions that were very convincing to manufacturers in the business, but not at all alluring if explained to investors through the prospectus.

COMBINATION COMPELLED BY THE INSTINCT OF SELF-PRESERVATION

A notable instance is the United States Steel Corporation. This company was not formed for the purpose of effecting the ordinary "economies of combination," but as the readiest means of averting calamity threatened by a steel-war. In 1899, when Mr. Carnegie first offered to retire, there were, in direct competition with the Carnegie Steel Company, the Federal Steel Company, a Morgan interest, and the National Steel Company, a Moore interest, both engaged in making pig-iron, steel ingots and billets. The American Steel and Wire Company, which made finished products in the shape of rods, wire, and nails, had from the beginning made its own pig-iron and steel, and in this way indirectly competed with the Carnegie company. The National Tube Company, a Morgan interest, naturally looked to the Federal Steel Company for its raw materials; while the other Moore interests, the American Tin Plate Company and the American Steel Hoop Company, obtained most of their material from the National Steel Company. All these concerns, both makers and users of raw material, were so closely allied as seriously

to threaten the market of the Carnegie Steel Company. In self-defence, Mr. Carnegie in 1899 secured such control of the traffic of the great lakes as to assure himself against a lack of ore. In 1900 he improved the mills about Pittsburg, until he produced one-fifth of the pig-iron and one-fourth of the Bessemer steel in the United States; and, by threatening to erect the largest mill ever built to roll rods and to manufacture hoops and bands, he attacked the American Steel and Wire Company and the American Steel Hoop Company. In 1901 he menaced the Morgan interests by commencing to build at Conneaut Harbor, Ohio—the Lake Erie terminal of the Carnegie road to Pittsburg—the largest tube manufacturing mill in the world. The Carnegie Steel Company owned the best equipped and best managed steel plant in the world. No one of its rivals could compare with it in self-sufficiency of production. Dividends had never been considered in its management. During two years of depression it had expended out of earnings, with a view to increasing its earning capacity by new construction, no less than $20,000,000. As Mr. Carnegie remarked, his partners knew nothing about making stocks and bonds, but only the making of steel. The steel

trusts which he threatened with war, meanwhile, invited attack. They were not only industrially less efficient but were financially endangered. The flotation of their securities, still largely in the hands of the underwriters, required the continuance of dividends on their enormously watered common stock; and, as a result of this policy of dividend payment, only a weak surplus reserve had been accumulated. The surplus reserve of a business company should be great in proportion to the variation, from year to year, in its profits. By such well-managed concerns as Jones & Laughlin Limited and the Midvale Steel Company, the extreme vicissitudes of the steel business had been provided against by the accumulation of reserves exceeding fifty per cent. The steel trusts, however, faced the incomparably greater calamity of a steel-war with reserves of scarcely seven per cent. They had only two ways of escape: either they must surrender outright to the Carnegie company, or they must eliminate that company from competition by uniting with it in one corporation, organised to own a majority interest in the merged steel companies. They chose the latter, and in 1901 formed the United States Steel Corporation.

Such causes for combination as these—for the

example of the steel trust is no less striking than it is typical—cannot be prettily stated in the promoter's prospectus: but phrased in the mildly descriptive catch-words of "elimination of competition" and "maintenance of fair prices" they are foremost in the minds of the manufacturers. To restrict a competition that threatens an entire industry with insolvency and to prevent a contest in prices from falling below a living scale have been the chief motives in the formation of every trust. From the standpoint of the investor and the consumer, as well as the promoter and the manufacturer, these motives are not only legitimate but even laudable. To save a fraction of the enormous sum which, somewhere between producer and consumer, vain competition has wasted is surely a praiseworthy ambition. But hands that are strong enough to accomplish this result have always been feared for the power they may turn to harm: so that now the very term "restraint of trade"—which literally describes the most economical means by which producers may supply consumers—has become the name of a crime of great penalty.

Because of its unpleasant connotation in the law, little has been publicly said about this first great saving of combination. Since it is the first

economy of trust management that proves itself to the manufacturer, promoters have spent little argument upon it. In the formation of most combinations, indeed, it has induced the desire to combine long before the promoter has appeared. The American Tin Plate Company first existed in the minds of the tin-plate producers, who had wearied of competition and appointed a committee to enlist the services of Judge William H. Moore, then famous for his successful organisation of the National Biscuit Company. By a similar spontaneous movement among manufacturers the same promoter was asked, in 1900, to organise the American Sheet Steel Company. As this is the strongest and most primitive cause of combination, the savings toward which it is directed deserve first attention. These economies are carefully to be distinguished from those which the public is usually asked to consider—economies no more peculiar to the trust than to any form of large-scale production. They are *par excellence* the savings of combination—savings in the marketing of product, resulting from restricted competition, as distinguished from savings in the production of output, resulting from concentrated capital.

THE FIXING OF PRICES

The control of prices is as truly the chief aim of the modern incorporated trust as it was the sole aim of those earlier loose combinations which the law has branded illegal conspiracies. The object of every combination is to fix the price at the point which will yield to the producer the greatest profit—not necessarily the greatest profit on each article produced, but always the greatest profit on entire business. To restrict the supply until the demand will determine the price at this point is the elementary principle of combination. The National Salt Company immediately on its formation divided the producing districts of New York, Ohio, Michigan, Kansas, and Texas into departments, and of the thirty-six plants in the business shut down six. The Distillers' and Cattle Feeders' Trust shut down all but ten or twelve of its eighty distilleries, and in order to keep the owners from re-entering the business paid them, for five years, managers' salaries of $300 per month, whether their mills were operated or not, and a ground-rent for their distilling properties of six per cent. on their appraised value. On the other hand, the Standard Oil Company, instead of diminishing the supply, has equal-

ised demand and supply by stimulating the demand for the products of petroleum. The contrast between these two policies is of vital importance to the consumer. The policy of enlarging the demand, pursued by the Standard Oil Company, has brought about a steady reduction in the price. The policy of the Distillers' and Cattle Feeders' Trust, which has been followed to less extreme lengths by many combinations, has been either to raise prices to an unsteady height or to maintain them firmly at the level which yielded a fair profit before the combination. In such trust-made products as whiskey, sugar, tin-plate, sheet-iron, and wire, combination has not yet made the price lower to the consumer. So long as prices are about what they should be in a season of good-natured competition, it might seem that the consumer and the manufacturer were getting each an equal benefit from the situation. In this illusion lies the whole charm of combination. To his own normal profits, the manufacturer in the combination can add others attracted from middlemen and secondary producers; and the consumer, who is none the wiser so long as he can buy at the old price, remains contented.

THE IMPROVED POSITION IN BARGAINING: THE FACTOR SYSTEM

The disadvantage under which the manufacturer deals with the jobber in the period of competition has already been described. "Under the old system," said Mr. Gates, explaining before the Industrial Commission the reason for forming the American Steel and Wire Company, "a merchant might quibble with half a dozen manufacturers, and there might be some one particular manufacturer that he would treat fairly, so that he would feel that he had a port in a storm. In the commercial term, men claim shortage, make unreasonable demands, and we do not find these demands to exist to any such extent as they did before. They claimed a shortage, for instance, of five kegs of nails or five spools of wire, and if we accepted their statement, we had to fight it out with the railroad company. We had a check, and we thought we knew we were correct, and now we are pretty apt to be firm." The first result of consolidation has been to stop long credits and dilatory payments, and to hold jobbers strictly to the letter of their contracts. The American Steel and Wire Company reduced the percentage of loss from bad debts from one-half of one per

cent. to one-twenty-fifth of one per cent. During the year 1890 the United States Rubber Company, doing a business of $28,000,000, lost less than $1,000 by bad debts: the loss before consolidation by the separate companies on that volume of business would have averaged over $100,000.

Besides correcting the former disadvantage under which the manufacturer dealt with the jobber, another frequent result of combination is completely to give the manufacturer the advantage by some form of factor system. In some manner or other, every trust seeks to dominate the wholesale trade. The General Aristo Company, which controls the manufacture of photographic paper in the United States, offers its goods to the trade at a discount of fifteen per cent., with an added discount of twelve per cent. to dealers who sign a statement presented every four months declaring that they have not "bought, sold, carried in stock, or disposed of, either directly or indirectly, any collodion printing-out or gelatine printing-out, bromide, or developing-out papers, other than those manufactured by the General Aristo Company's factories." The Eastman Kodak Company refuses to sell to a customer who carries also the goods

of its competitors. The Pittsburg Plate Glass Company, which produces seventy-two and one-half per cent. of the plate glass in the United States, has achieved by similar methods an extraordinary control over the whole business. Before the consolidation, the National Plate Glass Jobbers' Association had regulated prices for both consumer and manufacturer. To break the power of this association, the company invested $4,000,000 in a jobbing branch of its business and opened warehouses in seventeen cities. Having mastered the trade, the company divided the jobbers into "A" buyers and "B" buyers: the former, doing business on a large scale, were allowed to buy in stock sheets at preferential prices; the latter, carrying small stocks, were obliged to buy in cut sizes at higher prices. Certain sorts of cut sizes and stock sheets could be imported at a price from ten to fifty per cent. cheaper than domestic prices: but as some sizes could be obtained only from the trust, and as the trust offered a rebate of five per cent. payable at the end of the year to those who observed its terms and prices, the market was firmly in the control of the Pittsburg Plate Glass Company. The American Tobacco Company and the Continental Tobacco Company, which together con-

trol eighty per cent. of the trade, are said to retain their hold by secret arrangements with tobacco jobbers and wholesale grocers: a profit of two cents a pound was at one time allowed, with a further discount of three per cent. to all dealers who agreed to exclude the plug tobacco of new concerns, the new brands of old concerns, and all goods of certain designated old-established companies. In the factor system proper, the same principle is extended to the point of naming the price at which the jobber must sell to the retailer. At an interval of from one to six months the jobber makes affidavit that he has observed the prices and has sold only the goods of the trust: as the sole profits of his business he receives a percentage in rebates. This scheme originated in the sugar trade and has been followed in the selling of soap and baking powders. The Distilling and Cattle Feeding Company allowed its large distributers and rectifiers a rebate on spirits of two cents a gallon, and at stated intervals granted wholesalers who had sold only the goods of the company an additional rebate of five cents a gallon. Because of the stronger position from which it bargains with the wholesaler, the combination is assured at the outset a considerable share of the middleman's prof-

its. The consumer, be it noted, feels in no way harmed: and, strange to say, the middleman, who is most affected, welcomes the factor system as a grateful relief from competition. The cost to the community and to the wholesale trade of the competition among jobbers is enormous. Somewhere between the distiller and the consumer of whiskeys, $40,000,000 used to be lost for this cause. A similar loss in the sugar trade induced the wholesalers, through their association, to beg the American Sugar Refining Company to adopt the factor system. The president of the American Grocers' Association, discussing the arrangement before the Industrial Commission, strongly favored its adoption, not only as regards sugar but also as regards any commodity so uniform in quantity that special brands have little influence in fixing the price. Without such a system, he added, the wholesalers must handle such goods at a loss. An economy so harmless to the consumer and so satisfactory to the middleman deserves first place among the savings of combination.

THE SAVINGS IN THE SALE OF OUTPUT: LESS TRAVELLING MEN AND CONCENTRATION OF ADVERTISING

Akin to this economy is the saving which combination makes possible in selling the output. In those trades which formerly were most distraught by competition, this saving is most notable. The Distilling Company of America was able to dispense with three hundred travelling salesmen, and thereby to save annually $1,000,000. The United States Rubber Company saved twenty-five per cent. in the expenses of its salesmen, and the American Steel and Wire Company found it sufficient to retain only fifteen or twenty out of nearly three hundred travelling men. As the work of the commercial traveller is less important under a *régime* of combination, fewer highly paid men need be employed. The National Salt Company has taken in thirty per cent. of its salesmen and given them other employment. The Royal Baking Powder Company has found it profitable to replace salesmen, who used to be paid $3,000, with men whom it pays $18 a week. Ten firms, when combined, can each dispense with its travelling men and be represented by a few salesmen for the entire combination. Similarly ten firms, each of which advertises monthly

in the magazines, prints colored pictures for retail dealers, paints billboards and buildings and rocks throughout the country, and designs attractive packages, when combined may confine their efforts to two or three brands and effect quite as many sales. In this lay the chief economy of the International Silver Company, which manufactured sixty per cent. of the plated silverware of the country: many brands were discontinued, while the popular "Rogers 1847" brand was pushed more vigorously than ever. The experience of most trusts confirms the wisdom of advertising with increased persistence the few lines that have proved most popular. The American Chicle Company finds its most valuable asset in the trademarks of its most advertised chewing-gums. The National Biscuit Company owes its success to its vigorous advertising of Uneeda Biscuit and In-Er-Seal package. When the goods are staple and the consumer merely needs to know where to buy, a combination may almost eliminate the expense of advertising and of travelling men. But where a need must be awakened or a consumer persuaded that a particular brand is best, an increased advertising of a few selected lines is the best policy: the American Tin Plate Company and the American Steel and Wire Com-

pany have in this manner found it profitable to retain an advertising agency to push their roofing and fencing.

THE ECONOMICAL ADAPTATION OF DEMAND AND SUPPLY

Another economy in large-scale marketing comes from adapting the stock of the manufacturer to the needs of the buyer. Before the organisation of the American Thread Company, which produces one-third of the sewing-thread of the United States, each concern had advertised heavily, had sent out large numbers of travelling salesmen, maintained stores throughout the country, and was obliged to carry in stock one hundred different kinds, colors, and numbers. The trust reduced the advertising, dismissed a third of the salesmen, united all the stores in each city, and by assigning to each mill a special line was able to cut down the stocks one-half. The International Silver Company has attained a similar result by reducing the number of its warehouse-stores from fifteen to five. The United States Rubber Company has effected an equation of supply and demand by carrying in its warehouses less stock. In all these cases the expenses of interest, insurance, storage, and shop-work charges

have been reduced. In the whiskey business, on the other hand, this balancing of supply and demand requires the Distilling Company of America to carry all the leading qualities in stock, so as to supply every demand of its customers and to secure trade which otherwise would be lost. The company has so extended its stock that its customers may supply themselves not only with alcohol, spirits, and standard corn whiskeys, but also with the choicer brands of rye whiskeys, without leaving the establishment. Because of its stock, and its ability to supply its customers at any time with all the sugar they may require, the American Sugar Refining Company is frequently able to get one-sixteenth of a cent more per pound than its competitors.

THE CONCENTRATION OF CAPITAL IN LARGE-SCALE PRODUCTION

Such are the savings in the marketing of product —*par excellence* the savings of combination— which result from restricted competition, as distinguished from savings in production arising from concentrated capital. These latter economies, common to every form of large-scale production, whether or no it restrict competition, remain to be considered. The manufacture and

the selling of commodities, even in a small factory, are operations difficult to separate. In the great manufacturing trust, where the interplay of production and of marketing is more intricate, the task is even harder. Yet there seems to be a line of distinction. The economies already described are in marketing, and are obtainable only by a combination to suppress competition. The economies about to be considered are in production. A very few, as will first be shown, result from the restriction of competition; but the greater number arise from the efficient aggregation of capital in a single plant.

THE OPPORTUNITIES FOR BORROWING: "CHAINS" OF BANKS

In the mere cost of producing its output a combination of mills, as compared with a single plant producing on a large scale, obtains a distinct advantage. In the making of goods, the trust must bargain for the service of employees and of money-lenders with the same care that it buys raw material and sells its product. By the financial standing of its directors and its sheer monopoly strength, it may form alliances with banks and obtain lower interest rates on its commercial paper and on its long-time funded loans.

The Standard Oil Company, together with the Amalgamated Copper Company and certain other trusts in which Mr. Rockefeller and his associates are interested, derives extraordinary advantage from its financial alliance with two chains of New York banks. As this particular advantage of combination is rather recent, it deserves explanation. By the natural concentration which for a generation has been going on in the banking business, the National City Bank of New York has become closely connected with fifty or sixty other institutions in different parts of the country, and in New York has become head of eleven or twelve banks and trust companies. Identified with this chain of banks are the Second National Bank, the United States Trust Company, the leading officials of the New York Life Insurance Company, and the banking-house of Kuhn, Loeb & Co. Associated with these interests is another chain of banks, headed by the Hanover National Bank and including the Trust Company of America and the Union Trust Company. About ten years ago the Rockefeller interests secured control of the National City Bank: so that to-day they influence within New York City alone $108,000,000 of banking capital, $474,000,000 of deposits, and $323,000,000 of

loans. Similar alliances are available to the industrial trusts controlled by J. P. Morgan & Co. Within its chain of institutions the Morgan interest numbers the First National Bank, the Chase National Bank, the Manhattan Trust Company, the National Bank of Commerce, the Morton Trust Company, the Western National Bank, the Equitable Trust Company, the Mutual Life Insurance Company, and the Equitable Life Assurance Company. These combined institutions influence a banking capital of $97,000,000, deposits exceeding $472,000,000, and loans aggregating $327,000,000. The advantage to borrowers among the trusts in which the Standard Oil people and the banking-house of J. P. Morgan & Co. are interested may readily be imagined. Together, these two alliances have at their disposal nearly one-half of the banking capital of New York City. Not only are they ready at a moment's notice to loan millions and to undertake any vast enterprise for the favored trusts, but by their preponderance in the money market they are able to force the rivals of the trust to borrow at disadvantageous rates. The concentration of banking interests is for the most part due to the organisation of trusts in manufacturing industry. The offensive and defensive alliance be-

tween the trusts and the banking institutions, which is most conspicuous in the Rockefeller and in the Morgan interests, appears with greater or less distinctness wherever there is industrial combination.

THE IMPROVED POSITION IN DEALING WITH LABOUR

By its preponderant influence in the business, the trust has an enormous advantage in its dealings with combined labour. In 1899 during the smelters' strike in Colorado, the American Smelting and Refining Company closed the mills in which the strikers had been employed and transferred the work to its other mills: the effect was immediately to break the strike. The United States Steel Corporation had similar success in 1901 with the Amalgamated Association of Iron and Steel Workers. In the renewed labour contracts, between the association and the union mills of the American Sheet Steel Company, the association demanded that the scale be extended to all the mills of the company. This was refused, and on July 15th 75,000 men quit work in the mills of the sheet steel, steel hoop, and tinplate companies. Had the association been dealing with competing employers, each eager to

keep his mills running and to get the orders which his recalcitrant rivals could not accept, its demands would soon have been granted. During that same year, the members of the International Association of Machinists had played upon the mutual distrust of their employers and had obtained the nine-hour day. The United States Steel Corporation, however, with its solid resistance and its immense defence fund, filled its orders from other mills, and before fall completely broke the strike. When workmen are not entirely organised throughout an industry, the advantage of combination over smaller enterprise is of first importance. Strange as it may seem, however, this apparent menace to organised labour is not regarded by the leaders of the strongest unions as really ominous. Mr. Burns, former president of the Wall Paper Association, testifying before the Industrial Commission, declared the trust to be an aid to the union. Before the National Wall Paper Company was organised, the separate concerns were closed two or three months of every year. As soon as the trust was formed the union, which included nearly all the skilled workers, demanded an increase of working time to eleven months. This demand was granted; and by subsequent concessions the

union has been granted an increase of wages and employment for the full year. Mr. Burns believed that employees who were thoroughly organised derived a decided advantage from dealing with a trust: and that in the savings of combination the employees found opportunities for self-advancement greater than before. Generally speaking, these feelings of goodwill have been reciprocated by trust managers. The officials of the Standard Oil Company have long been outspoken in their support of trade unions. The policy of the United States Steel Corporation has been to allow the constituent companies to deal with organised labour as they chose: accordingly, the National Steel Company, the American Steel Hoop Company, the American Tin Plate Company, and the Federal Steel Company, though they do not employ union men exclusively, treat regularly with the Amalgamated Association of Iron, Steel, and Tin Workers and observe the Amalgamated scale of wages. Whatever be the feelings between the trusts and the labour unions, a singular industrial peace has been secured by combination. Estimated as an item in the cost of production, this saving is enormous.

THE ADVANTAGE IN BUYING RAW MATERIALS

But the most exploited—if not the most important—advantage of large-scale bargaining is in buying supplies. The American Sugar Refining Company, being the principal purchaser of raw sugar, can not only select the best markets, but can also depress the price one-sixteenth of a cent per pound. The Standard Oil Company, being the chief buyer of crude petroleum and the owner of the pipe-lines through which it must pass, has brought the price of crude oil to a firm level. The American Thread Company saves at least five per cent. by buying all its cotton supplies in large quantities through one officer and having it shipped to the different mills. The greatest problem of large-scale production under present conditions is to secure a certain supply of raw material. In the accomplishing of this result lies the first advantage of the United States Steel Corporation. Through its control of the Lake Superior and the northwestern Minnesota ores, a mixture suitable for any purpose may be obtained. It already owns half the coke supply of the United States; and, by its fleet of 112 boats on the great lakes, is assured a constant flow of ore toward its furnaces. The mere size

of a trust, as appears from the relations that till lately existed between the trunk lines and the Chicago meat packers, is sufficient to induce railroads to grant concessions in speedy delivery, car supply, and free storage on the track. Because of the size of its orders for material, a trust is spared the vexatious delays of a small buyer. In a time of increasing demand the small buyer is frequently obliged to wait, regardless of the terms of his contract, until the orders of his larger rivals are supplied. During the recent rise of bituminous coal the large buyers, protected by long contracts, suffered no inconvenience, while the small buyers not only had difficulty getting any coal, but also were compelled to pay the full advance in current prices.

IMPROVED PROCESSES AND SUPERINTENDENCE

Turning now to savings in manufacture, as distinguished from savings in bargaining, one finds in the trust the classic economies of production on a large scale. By running only the best plants and by using the best processes and machinery, the Distilling Company of America has raised the yield of high whiskeys for each bushel of corn from three and one-half gallons to four

and three-quarters—a yield at present one-half gallon greater than the average for all the distilleries of the country. By distributing its refineries in strategic locations, at Bayonne, N. J., and at Whiting, Ind., the Standard Oil Company secures not only economy in transportation charges, but also the advantages of cheaper land, of labour, and of fuel. Careful experimentation in processes has enabled the company to reduce the cost of refining, and to utilise the residuum in the manufacture of nearly two hundred by-products. During the last ten years, while dividends have ranged from twelve to forty-eight per cent., half the profits of the Standard Company have been owing to these savings alone. The American Steel and Wire Company, by doing away with the official organisation of the constituent companies, was able to save the salaries of half its highly paid officers.

The opportunity for better superintendence should be, on principle, greatest in the industrial trust. The National Salt Company, in order to keep in close contact with the trade and to avoid dealing with conditions a thousand miles away, has divided the producing districts into departments, and with a few general instructions from the central office allows each to conduct its busi-

ness in its own way. Every day each district reports its sales, and once a month the books are closed and a statement prepared showing what has been made or lost and where and how. By "rubbing the records of the different managers together"—in the phrase of the president of the company—the accounts of the different plants are closely compared and good results obtained. A similar method was followed in the Carnegie Company, and is being followed in the United States Steel Corporation. No matter how small the steel plant, it requires a skilled smelter, a skilled engineer, a chemist, and a draftsman. By consolidating and by adopting the same methods in all the mills, the United States Steel Corporation has made one chief chemist and one chief engineer do the work of several. Among the executive offices it has achieved still greater results. Following the Carnegie example, every superintendent receives, in addition to his salary, a percentage based on his profits or output or quality or whatever is most important to develop in his department. If there are three open-hearth departments in the same works, managers are placed at the head of each and pitted against one another, so that the best processes may be evolved. After the formation of the Glucose

Sugar Refining Company, the manager of the best of its mills—the only one that before the consolidation had made reasonable profits—found so many new ideas from the other five mills in the trust that he greatly increased its efficiency. The president of the American and the Continental Tobacco Companies declares that their greatest advantage comes from this interchange of ideas.

THE CONTINUOUS OPERATION OF MILLS: THE DISTRIBUTION OF ORDERS

There are still other economies of large-scale production which find striking illustration in the modern trust. Mr. Havemeyer regards the greatest saving of the American Sugar Refining Company to be the continuous operation of the best plants at full capacity. All but six or seven of the refineries that entered the combination were shut down and dismantled. The savings effected by running these six or seven at full capacity are as high as one-eighth of a cent per pound. If there be a slackening in the demand, the output is reduced in the Brooklyn refinery alone. Through the operation of this refinery, the best equipped and most skilfully manned in the combination, the supply of sugar is fitted to

the demand of the market. From day to day its output is watched, and every method is employed for preventing waste: the total loss from reduction of output is thus confined to a single refinery; whereas, under separate management, the loss would affect every plant in the business. In similar fashion, by continuously operating fewer mills instead of running all its mills half time, the United States Rubber Company saves from four to eight per cent. in the cost of production. Another economy is the better distribution of product among the different mills in the combination. Before the organisation of the American Steel Hoop Company each mill, in order to meet the demand for various shapes and sizes, had to keep on hand a great variety of rolls. In filling large orders of many varieties, furthermore, considerable time was lost by stopping the mill in order to change the rolls. After the combination was formed, each mill produced only certain sizes. When a large order was received, it was distributed to the mills producing the required varieties. By the increased efficiency of working on a single product, and by the saving in the time previously lost in changing, at least one dollar extra profit accrued on each ton of product. A notable economy in the same direc-

tion was accomplished also by the United States Steel Corporation. The National Steel Company had been making rails at Youngstown, although the Federal Steel Company was better suited for the distribution of rails, and the Lorain Steel Company for their manufacture because of its proximity to the ores. As soon as the combination was effected, steel rails were made solely by the mills best suited to making them, and the works at Youngstown devoted to another line of manufacture. By a similar specialisation and adaptation of workmen and superintendents to particular departments, and by a larger use of special machinery, as much as twenty per cent. has been saved by the United States Rubber Company in the manufacture of rubber goods.

THE STRATEGIC LOCATION OF MILLS

Still another economy, which has lately become conspicuous in the manufacturing industry, is the strategic location of mills. The ultimate goal of industrial development would seem to be the dispersion of manufacturing businesses according to the situation of the markets. Before the formation of the American Steel and Wire Company, the wire business in its efforts to meet the

consumer in his own territory had distributed itself over ten States, from Massachusetts to Washington. By supplying the buyers of its products from its nearest mill, the American Steel and Wire Company saved cross-freights exceeding $500,000 in a year. Similar reasons have caused the plants of the American Sugar Refining Company to be distributed in six States, from Louisiana to California, the American Car and Foundry Company to locate in seven States, the Continental Tobacco Company to manufacture in six States, the American Tin Plate Company to be represented in five States, and the Republic Iron and Steel Company to scatter its plants from Minnesota to Alabama. By this strategic distribution of its mills each trust has attained a considerable saving in cross-freights. The Standard Oil Company, whose experience in this particular is most valuable, has found it economical to operate refineries in different sections of the country, one group to supply the East from Bayonne and another to supply the West from Whiting. Every business whose output is heavy or bulky is deeply concerned with this item of efficiency. In the salt industry from thirty to sixty per cent. of the price of the product represents the cost of the freight. Indeed, before the

National Salt Company was formed the freight often exceeded the value of the salt at the place of production. By stopping the attempt of the separate concerns to get business outside their natural territory, and by supplying the consumer from the works most convenient to him, the trust has effected an enormous saving.

THE TWO TESTS OF TRUSTS

By their economies in the marketing and in the manufacture of their products the industrial trusts must be judged. From the industrial standpoint, by witnesses on every hand, the trust movement would seem justified. *Prima facie,* these economies are both real and legitimate. The prevention of ruinous competition and of industrial war, the saving of enormous sums which vain competition among middlemen is everywhere losing between producer and consumer, the economy to the manufacturer of large-scale bargaining with his banker, with his employees, and with producers of raw material, and, finally, the usual economies of production on a large scale—all these savings show the new form of business organisation to be more economical, and consequently to be more

efficient than the old. Whatever tends to make the trust an enduring form of industrial organisation appears in one or another of these savings of combination. But there is another side to the shield. Industrially, any particular trust must fail unless it assembles sufficient economies to compose an advantage over competing concerns which it supplants: whether the present trusts have accomplished or can accomplish this must first be inquired. Politically, the interests of the consumer, of the competitor, of the investor, and of the State overshadow mere perfection in industrial efficiency: unless the present trusts can show that practical monopoly is shorn of its mediæval terrors, they must be destroyed like so many economic Frankensteins. These two tests, as will soon appear, expose the entire extent of evil in the trust situation.

CHAPTER THREE

THE EVILS OF PRACTICAL MONOPOLY

The evils of practical monopoly—it is commonplace to say—are the obverse of the savings of combination. Were this statement a merely rhetorical figure, the task of this chapter would be easier. But, unfortunately, this analogy is all too perfect: the very warp and woof of trust economy, that produces on the fair side a splendid show of industrial efficiency, on the wrong side presents in the same weft an array of industrial dangers. The preceding chapter, dealing with the fair side, has perhaps suggested that beneath there is another and a seamier side: saving in salesmen's salaries, from the opposite point of view, is discharge and distress of the commercial travellers. In their effect, the very savings of combination are among the evils which the popular mind associates with the trust. At the outset, accordingly, the characteristics of trusts described as savings of combination must stand in-

quiry, and prove themselves socially and politically as harmless as they are industrially efficient.

THE EVILS THAT LURK IN THE SAVINGS OF COMBINATION

These savings in order of importance are, first of all, savings in marketing—*par excellence* the savings of combination—and, second, savings in production. The first class of economies, which distinguishes the combination and is original with it, might naturally be supposed, being the newer of the two, to be most deplored in its ultimate effects. Among this class, it will be remembered, are the economies effected by control of output and of prices, by the factor system, by the reduction in cost of selling, and by bargaining on a large scale. Among the second class, on the other hand, are all the savings of large-scale production familiar in manufacturing since factories were first built. Strange as it may seem, the outcry against trusts has been indiscriminately against the effects of both sorts of savings: and, so far as it has been articulate, has been bitterest against those savings which factory and large-scale production have for generations familiarised and justified.

The evils attributable to the particular form of organisation assumed by modern trusts must be left to another chapter. The evils which the trusts by the fact of their practical monopoly have brought into the world lie behind their savings of combination. Most of these evils, indeed, are potential. The consumer, as already has appeared, has not generally been forced to pay higher prices than during former seasons of good-natured competition: and the middleman, in several instances it has been shown, has eagerly welcomed the business security which only a dominating trust can offer him. The traditional terrors of monopoly—the regrating, the forestalling, and the engrossing of the market—which mediæval statutes attacked are not conspicuous in the trusts of to-day. Beneath the surface, however, and inbred in their nature these evils, we are told, still persist. They are inherent in practical monopoly, flowing from the same causes that effect practical monopoly. They grow out of the very economies that are the strength of the trusts. Subsisting on this strength they grow dangerous with it—so the accusation concludes—and can only be cured by destroying the essential strength of the trusts.

THE CONTROL OF OUTPUT AND OF PRICES

Control of output and of prices has been seen to be the first aim of combination. So distinguishing a trait is it that a trust can best be defined as a combination which has attained this result. The United States Steel Corporation controlling sixty-five or seventy-five per cent. of the steel industry of the United States, the American Sugar Refining Company selling ninety per cent. of the sugar output, the United States Rubber Company handling fifty-five or sixty per cent. of the rubber trade, the American Tin Plate Company controlling ninety per cent. of the business, the American Steel and Wire Company producing seventy-five per cent. of the output, the Standard Oil Company refining eighty-five per cent. of the oil, the International Paper Company producing sixty-five per cent. of the news-print paper, and the whiskey combinations, at one time or another, controlling ninety-five per cent. of the distilling business of the United States—all these exercise a substantial control of output: they have that practical monopoly which characterises the trust. Their ability at any moment to withdraw from the market, or to throw into the market such a preponderant part of the output, gives them

power, within certain wide limits, to fix the price. For years the Standard Oil Company has announced from day to day the price at which it would buy crude oil, and the price at which it would sell the refined: and this price has been the market price followed by its competitors. In similar fashion, the American Sugar Refining Company first posts the prices for the day, which are generally followed by its competitors. By their control of the market, and by the superior position from which they can bargain with the trade, the trusts have fixed prices at a point remunerative to the manufacturer. So far, so good: such was their saving by combination; but are they not likely to raise prices above the fair mark? does not the saving of combination threaten an evil to the consumer?

The practice of the present trusts is familiar. They have effected large savings in marketing and in manufacture and, by maintaining prices only slightly above competitive rates, have lulled the apprehensions of the consumer. The Industrial Commission, in an elaborate report, has presented the results of this practice. The cost of manufacture plus the item of profit being represented as the "margin," a table of sugar prices shows that the American Sugar Refining Com-

pany immediately upon its formation increased the "margin," lowered it during the Spreckels competition, raised it with the new combination, lowered it during the Arbuckle combination, and subsequently raised it. The chart of spirits prices during the combinations in the distilling business is still more fluctuating. The Pittsburg Plate Glass Company, by the admission of its president, raised prices sixty per cent. Combination in the steel business, the Commission found, had not been able materially to raise prices because of the conditions of the wholesale trade. In a period of demand the middlemen call for more than they need, and prices rise to an unjustified height, As soon as an oversupply is threatened, prices fall lower than market conditions would justify. The effect of the United States Steel Corporation has been rather to prevent these abnormal fluctuations than to change the general average of prices. As Mr. Schwab explained, the company has not sufficient control of the output to fix prices in a period of depression; but when demand is great and mills are running full, it can steady prices and production and fix the rate beyond which none can go. In the case of the typical trusts, such as the Standard Oil Company, the American Tin Plate

Company, and the American Steel and Wire Company, the margin has been steadily maintained, the price of the finished product diminishing only according to the cost of the raw materials; or else has been very gradually lowered. A similar steadying of prices has been effected by the International Paper Company and the National Salt Company. The practice that proved ruinous to the early combinations in the whiskey trade caused the ruin of the National Cordage Company, at a time when it controlled seventy per cent. of the entire business. "The general results of the study," the Commission concludes, "show that in most cases the combination has exerted an appreciable power over prices, and in practically all cases it has increased the 'margin' between raw materials and finished products. Since there is reason to believe that the cost of production over a period of years has lessened, the conclusion is inevitable that the combinations have been able to increase their profits." Accepting as the true tendency of the trust that practice which has been most successfully followed, and disregarding as containing its own ruin the fatuous policy of exorbitant and fluctuating prices, the chance of harm that may lurk in the control of prices will now be considered.

THE EVER-PRESENT POSSIBILITY OF COMPETITION

The harm apprehended in this control of prices is stated thus: The combination may so frighten would-be competitors out of investing capital in rival enterprises that eventually the combination may charge more than former competitive rates among small manufacturers. To build and thoroughly equip for competition a steel plant requires a capital of $2,000,000; if the risk of acute competition were great, such an enterprise might prove difficult. Nevertheless, the Industrial Commission found that no business was in less danger of monopoly than the steel business. Many independent steel manufacturers, indeed, declared that the United States Steel Corporation is a positive benefit to them. In most industries an efficient competing concern can be established with much less capital. A cordage factory with a capital of $200,000 can do a successful business; a sugar refinery of $1,500,000 capital may hope to compete with the trust; a distillery operated on $1,000,000 forced the reorganisation of the American Spirits Manufacturing Company; and a concern owning two small salt-wells compelled the sale of a special plant of the National Salt Company. Leading

officers of the wall-paper and of the cordage combinations have stated that independent manufacturers, who show in their business an equal amount of intelligence and energy, can hold their own against the combination; having at different times occupied both positions, these men may speak from experience. "It seems to be reasonably well established," says the Industrial Commission, "that when attempts are made to organise combinations in lines of manufacture where a comparatively small capital is needed to start in the industry, or where the success is not dependent upon brands, saving in cross-freights or similar advantages, the combination is less likely to prove successful than the smaller establishment." So long as monopolistic control is absent, in businesses like the steel manufacture which require great capital, and so long as competing enterprise is easy to start, in businesses where trust control is most conspicuous, there is little danger that the would-be competitor—having once seen the vision of unusual profits—will be frightened away from the business.

When he once enters the field—as the experience of the whiskey and the cordage combinations shows—there is quick relief from exorbitant prices. Eighteen months, in the instance of the

Wire Nail Pool of 1895, sufficed competitors for providing facilities to break the market. Two years of exorbitant prices for sugar brought upon the American Sugar Refining Company, in 1889, the ruinous competition of Claus Spreckels. Speaking from a particularly illuminating experience, General McNulta, receiver of the Distilling and Cattle Feeding Company, testified before the Industrial Commission: "I do not regard all these industrial trusts dangerous, as some people do, because I do not think it is possible for them to exist and hold up prices for any long period of time, as in the case of this distilling company, and as it would be in any enterprise that can be started with a small amount of capital. As I said to you a while ago, they may start a trust and buy up a hundred or two hundred distilleries or factories in any other industry, but the only way they can keep them in operation is by keeping the cost of production below what it can be kept by small concerns. The moment they reach out for more than a reasonable profit on the cost of production, that moment other plants will be created faster than any trust can buy them up." The power that comes with the control of output, of price, and of the market is considerable; but it is only such

power as naturally accrues to the leading concern in any industry. In the persistence with which competition against a trust continues, in the quickness with which that competition increases when opportunity for profit under unusual prices appears, and in the ever-present possibility of competition which meets a trust at every turn in its policy, lie the safeguards against the abuse of this great power.

THE TREATMENT OF LABOUR

Conspicuous among the economies of trust management were found the familiar savings of large-scale production. Concentration in large plants, improved superintendence, distribution of product among various mills, continuous operation of factories, elimination of bad debts, reduction of stock carried on hand, savings in the expense of salesmen and of advertising—all these economies, it has been seen, are present in any plant producing on a large scale, and accordingly are met with in industrial trusts. The hardship which these savings entail is sometimes considerable. The president of the Travelling Men's Protective Association has estimated that the trusts have thrown out of employment 35,000 salesmen and

reduced one-third the salaries of 25,000 others. Under competition, salesmen were needed to push the goods, but under combination this necessity is not felt. Naturally this policy of economy arouses great hostility among those affected by its operation. Such disaffection, however, belongs with the opposition of sailing-masters to steamships, and of stage-coach drivers to railroads. Industrial organisation, like transportation, can accomplish the greatest good for the community only by developing the greatest economies; and those unfortunates who depend for their living on a dispensable branch of industry must be sacrificed for the benefit of the rest. The substitution of factory machinery for hand-tools familiarised the community with this process a hnudred years ago. Subsequent events have reconciled the most sympathetic observer of these individual misfortunes to the ultimate wisdom of their cause. Regarding the similar though less widespread effects which the trusts by their economies of large-scale production have brought about, the same judgment must be passed.

The danger with which the trust is said to threaten its employees has not been borne out by the facts. "The evidence before the Commis-

sion," to quote its report, "indicates that the great majority of the combinations recognise trade unions and deal with their representatives in fixing the wage-scale and conditions of labour." Samuel Gompers, president of the American Federation of Labour, thinks it possible for trade unions to organise as thoroughly as the trusts, and to resist without difficulty any encroachment of capital. The belief that organised labour can secure its proper share of any saving that may accrue from combination has elsewhere been mentioned. On the whole evidence, the trade unions have good reason to be favourable to the trusts. The Distillers' and Cattle Feeders' Trust, immediately on its formation, in 1887, raised the wages of its employees. The American Sugar Refining Company increased wages. The Standard Oil Company, which in the entire history of its business has never had a strike, pays to its 35,000 employees standard wages, and to those in responsible positions very high salaries, and very recently has begun a system of pensions. The American Tin Plate Company raised wages fifteen per cent., the American Steel and Wire Company increased its wages as high as forty per cent., and the International Silver Company advanced wages from five to ten per cent. The

common practice among trusts of discharging unnecessary officers, of lowering the salaries of those retained in less responsible positions, and of raising the wages in the common employments is well shown in the case of the Federal Steel Company. During the years of 1898 and 1899 there was an increase of over four per cent. in the number of officers and clerks, and a decrease of about six per cent. in their pay. Throughout the works, there was an average increase of wages amounting to eleven per cent.; the common labourers were advanced sixteen per cent., while the high officers and clerks at headquarters were reduced. "So far," says the Industrial Commission, "there seems to be no indication that the combinations are attempting to lower the wages of workingmen. The attention of the Commission has not been called to a single instance of an attempt on the part of the combinations to reduce wages generally. In fact, the combinations have apparently raised wages as willingly as individuals and given their employees privileges of all kinds with no more hesitation. The investigation made by the Department of Labour, at the request of the Industrial Commission, shows that combinations have raised wages slightly more than other employers of labour in

the same industry. These records are somewhat incomplete, but indicate that up to the present time combinations have dealt with their employees, so far as wages go, as fairly as the managers of independent plants, or as the constituent members of the combination before its organisation." The ultimate effect of this redistribution of wages depends, of course, on the use to which it is put. The saving in the salaries of superintendents and travelling men, it is certain, redounds in considerable measure to the general industrial benefit by increased wages of the common labourers.

DOMINANCE THROUGH TRUST-BARGAINING

More serious possibilities of evil, as appeared in regard to control of output, of price and of market, lie in the direction of trust-bargaining. As the chief purchaser of raw sugar, the American Sugar Refining Company gets an advantage amounting to one-sixteenth of a cent per pound in selecting its markets. The American Tin Plate Company and the American Steel Hoop Company, as large buyers of steel, get contracts at better rates than smaller buyers. As the chief refiner and owner of the main pipe-lines, the

Standard Oil Company, it has been charged, can fix the price of crude oil to the detriment of the producer. In competing with smaller pipe-lines the company has frequently paid premiums on oil until its rival was driven from the business, and then has bought at a reduced price. Since 1895 the Seep Purchasing Agency, which buys for the Standard Oil Company eighty per cent. of the crude oil of Pennsylvania and Ohio, has fixed the price of petroleum in the oil regions. But even its opponents admit that the variations in price, since 1895, have been due to the amount of output and not to the arbitrary acts of the company. The service which the company has done, furthermore, in steadying the price of its crude material at the point fixed by the world supply and demand draws attention to a positive benefit of trust-bargaining. The experience of the sugar and the rubber combinations—and more recently the action of the United States Steel Corporation in lowering the price of Lake Superior iron ore $1.25 per ton—shows that the larger trusts find it to their interest and within their power in large measure to prevent speculative advances and reductions in the prices of raw materials. In many industries, as in cordage and sugar, the speculative element in the price of raw

material is the chief factor determining profit and the price of the finished product. Far from being an evil, any steadying influence which can restrain this fluctuation, by the testimony of the manufacturers independent of the trusts, advances the general interests of the trade and of the consumer.

COMPETITION BY DESTRUCTIVE PRICES

From the standpoint of its competitors, the greatest evil ascribed to the combination is the cutting of prices in local markets for the purpose of driving out rivals. This practice—described frequently as a "destructive method of competition," and in many of the recently proposed anti-trust measures expressly forbidden—was followed by the American Sugar Refining Company in its early days, and in its later competition with the Arbuckle Brothers and the Doscher interests. The president of the National Salt Company frankly admits that his policy is to sell low where there is competition, and to recoup off the general market. Such a policy, he emphatically points out, is universal in business of every size wherever there is competition. His

company, like most trusts, is everywhere beset by potential competition. Since there is not a town in the country which his competitors cannot reach if they wish, he finds it impossible to raise prices in remote districts to make up the loss in fighting competition. The practice of cuts in local markets has most frequently been charged against the Standard Oil Company. The Industrial Commission went to the pains of collecting, from 5,000 retail dealers throughout the United States, the wholesale prices which they paid for oil. Since some dealers bought in tank-cars and others in barrels or from local tank-stations and delivery wagons, the diversities in transportation charges accentuated by differences in railway charges per ton-mile were considerable. While seeking new fields, moreover, the opponents of the Standard Oil Company frequently cut prices; and in order to hold its market the trust was forced to follow with still lower prices. Allowing for all these confusing elements, difficult to estimate in dollars and cents though clearly justified in the ethics of competition, the varying prices found by the Commission seem not unreasonable. Trusts have probably more than once reduced prices in competitive markets while they maintained them elsewhere.

A similar charge may be brought against any large business. To denounce as an evil this common practice of trade is to attack the basis of commercial order. The charge cannot better be answered than by the words of a great English judge in one of the most important cases of modern times: "We are told that competition ceases to be the lawful exercise of trade, and so to be a lawful excuse for what will harm another, if carried to a length which is not fair or reasonable. The offering of reduced rates by the defendants in the present case is said to be 'unfair.' This seems to assume that, apart from fraud, intimidation, molestation, or obstruction of some personal right there is some natural standard of 'fairness' or 'reasonableness' (to be determined by the internal consciousness of judges and juries) beyond which competition ought not in law to go. There seems to be no authority, and I think, with submission, that there is no sufficient reason for such a proposition. It would impose a novel fetter upon trade. The defendants, we are told by the plaintiff's counsel, might lawfully lower rates provided they did not lower them beyond a 'fair freight,' whatever that may mean. But where is it established that there is any such restriction upon commerce? And what is to be the

definition of a 'fair freight'? It is said that it ought to be a normal rate of freight, such as is reasonably remunerative to the shipowner. But over what period of time is the average of this reasonable remunerativeness to be calculated? All commercial men with capital are acquainted with the ordinary expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away to reap a fuller harvest of profit in the future; and until the present argument at the bar, it may be doubted whether shipowners or merchants were ever deemed by law to conform to some imaginary 'normal' standard of freights or prices, or that law courts had a right to say to them, in respect of their competitive tariffs, 'thus far shalt thou go, and no farther.' To attempt to limit English competition in this way would probably be as hopeless an endeavor as the experiment of King Canute. But on ordinary principles of law no such fetter on freedom of trade can in my opinion be waranted."*

* Bowen, L. J., in Mogul Steamship Company *vs.* McGregor, 23 Q. B. D. 598, 615. Affirmed in House of Lords, 1892, Appeal Cases, 25.

SPECIAL FAVOURS FROM THE RAILROADS

The evil of freight discrimination, however, which has been attributed to many of the trusts, may fairly be called a mode of "destructive competition." "There can be no doubt," says the Industrial Commission, "that in early times special favours from railroads were a prominent factor, probably the most important factor, in building up some of the largest combinations. The receipt of discriminating favours from railroads has been conceded repeatedly by representatives of the combinations themselves." Before the Interstate Commerce Act of 1887, discriminations were not forbidden by statute. As was shown in an earlier chapter, the Standard Oil Company availed itself, in those days of ruinous railway competition, to get discriminations from the railroads. In no small degree, these special favours hastened the supremacy in the oil business. After the passage of the Interstate Commerce Act, so far as the evidence before the Commission went, no direct discrimination was proved. At the present time, concessions are made rather by manipulation of the freight tariffs and classifications than by direct granting of special rebates. In the case of coffee, for instance, different classi-

fications prevail for the green and for the roasted berry. In the Official Classification of 1900, the former was advanced by changes and the latter continued: the effect of which, as the Commission found, was to prevent competition on the part of coffee roasters at local centres. The live-stock and dressed-beef combinations, also, received from the railroads entering Chicago and Kansas City large sums as mileage for the use of private stock and refrigerator cars. On a single line of roads between Chicago and an interior Eastern point 470 miles distant the refrigerator-cars of three firms earned in nine months a mileage of $72,945.97, or about $8,112 a month, or $100,000 a year. The sum which the railroads pay one another for the use of such cars is six mills per mile; but the combination of shippers frequently exacts three-fourths of a cent. The system of private cars arose out of the inability of the railroads to provide adequate facilities. At the present time, President Callaway of the New York Central Railroad says that most roads would gladly abolish the system; but so long as their competitors grant the privilege it must be accorded by all. In a time when public opinion, the law, and the most enlightened railway economy denies the necessity of discrimination, one

can heartily agree with the Commission in saying that "the effect of such discriminations upon the rivals of the combination is self-evident: the injustice of the practice can scarcely be exaggerated, and warrants the most earnest efforts to suppress it." Every tendency toward the consolidation of railroads renders them more independent of the industrial trusts; and an encouraging sign of the times is the stand the railways are taking against practices which, a generation ago, they themselves originated.

THE EFFECT ON THE DEVELOPMENT OF TALENT

The last evil attributed to the trusts is that they close the opportunity for independent management of business, and thus weaken the moral fibre of the community. This objection belongs with the objections raised against every form of large-scale production. It was urged when the cottage weaver with his hand-loom was obliged to give way to the factory with its thousand of mule-spinners; and, in the same way, experience must refute it. A field for the independent manufacturer of small means has already been shown to be left open. Only a minority of the manufactures are controlled by combinations. Trades

requiring artistic skill to please the tastes of consumers—the clothing business, the furniture trade, and all the handicrafts—remain generally free from combination. Since the formation of the United States Steel Corporation, a small concern of $200,000 capital, whose raw material is chiefly scrap steel, has stated that in its special line of work it has no reason to fear the big combination. While it may be more difficult in some enterprises for a man with little capital to enter business independently, the opportunities for a young man to work up as an employee are greater than previously. "Never before," says the Industrial Commission, "has there been so strong a demand for men of marked ability as at the present day, and never before was the reward so great. A large industrial combination, in order to hold its own against the competition of rivals, must be efficiently managed. Probably nowhere else is what may be called, by analogy, civil service of promotion so rigidly followed as in the case of these great corporations." Judge Moore, while promoting the steel combinations, found many manufacturers well advanced in years eager to withdraw from active management, and young men of greater energy ready to put in their stead. The dominance in the board

of directors of men actively engaged in the business; the discretionary powers and large responsibility of the superintendents in charge of different mills; and the rivalry enforced among these managers by monthly comparison of accounts, all show no slackening in the incentive to individual activity.

RAILWAY DISCRIMINATION: THE ILL THAT HAS NOT PROVED SELF-CORRECTIVE

By the fact of their practical monopoly, the trusts have been seen to threaten, to various minds, the evils of unreasonable increase of prices, oppression of employees and of raw producers, destructive methods of competition, and detrimental social effects. The bearings of the evidence presented on these points may shortly be stated. In the steel industry, where combination is largest, extortionate advances in prices are not prevalent or anticipated; in other industries, where combinations are smaller, prices are maintained above the fiercely competitive rate, but the imminence of competition from outside effectively prevents any further advance. The employees on every hand have received generous treatment from the trust; and wherever organised they may expect,

for the future, a still greater share of trust savings. Producers in raw material have in many cases lost the element of speculation in their business, with its chance of great profits and losses; but in its place they have the certainty of steadily remunerative prices. Many so-called destructive methods of competition, like certain of the hardships of curtailment in large-scale production, have been justified out of familiar business experience: cutting prices in the territory of rivals and the discharge of superfluous salesmen and superintendents are common to all large businesses. The social effects of trust management, whatever they may be, are restricted to that fraction of industry where alone combination is possible. While the opportunity remains open for independent enterprise, and the reward for real ability is increased in the trust, these social effects can hardly seem dangerous. A genuine evil, however, has appeared in the special favours which some trusts secure from the railways. Although railway discrimination is not original with the trust, the trusts as the largest shippers are to-day among the chief offenders: and, although consolidation raises the railways to a plane where they treat more bravely with large shippers, the growth of combination among shippers seriously

neutralises this result. Attorney-General Knox has done wisely to centre his efforts on this evil. Industrially, most trusts have assembled sufficient economies to compose an advantage over the competing concerns which they supplant. Politically, they have generally proved that under modern conditions most ills of practical monopoly carry with them their own cure. By these two tests, the entire extent of the evils of practical monopoly is measured. Among these evils, railway discrimination stands out as the ill that is not self-corrective. To this evil—and also to the defects which will appear in the form of organisation of modern trusts—must be applied some statutory remedy.

CHAPTER FOUR

THE EVILS IN PRESENT TRUST ORGANISATIONS

The evils inherent in any business enjoying practical monopoly have already been shown. The most prominent evils of modern trusts, however, seem due, not to the fact of practical monopoly, but to defective organisation and faulty management. The former class, so far as they were not self-corrective, affected the consumer, the competitor, and the State—in general, those outside the trust. The latter class affect primarily the investor in trust securities; and, in so far as the interest of the investor is the interest of the State, the community at large.

THE RELAXATION OF CORPORATION LAWS

Contemporaneous with industrial combination has come a change in the theory of corporation law. The old notion was that the corporation, being the creature of the State, should be

guaranteed by it to the public in all particulars of responsibility and management. Beginning in the late eighties and early nineties, there came a different view. The corporation, it was said, is merely a legal person: its stockholders and creditors are no more the wards of the State than are the partners and creditors of an ordinary citizen; and, in the absence of fraud in organisation and in management, a business corporation should be allowed to do anything that an individual may do. Under the modern theory, the State owes no duty to persons who may deal with corporations to look after the solvency of the companies; nor to stockholders to protect them from the consequences of investing in such concerns. When it has clearly provided that creditors and stockholders shall be informed of all the facts of organisation and of management, the duty of the State has ended.

So far the relaxation of corporation laws was reasonable. By successive changes in their laws, however, several States went far in the direction of laxity. The charter of the United States Steel Corporation is a striking instance of the good-natured New Jersey law. There is no shareholders' liability—although in New York there is individual and joint liability of all share-

holders to the amount of their shares until all the stock is fully paid, and in New York, Pennsylvania, and Indiana there is individual liability for debts due to labourers, and in Ohio and Minnesota there is double shareholders' liability. The directors are individually liable for debts—as in New York and Illinois—and for any amount of dividends paid out when no profits are earned. The directors have power to increase their numbers as they choose, and to use the surplus funds in purchasing the stock of the company. Outside of New Jersey, Delaware, and West Virginia, a corporation is allowed only such corporate powers as are specifically granted by the articles of incorporation. In the charter of the Steel Corporation, however, it is provided that "the certificate of incorporation may also contain any provision which the incorporation may choose to insert . . . creating . . . the powers of the corporation." This allowed the three incorporators to create any corporate powers they pleased and to confer them on the United States Steel Corporation—unless they were among the very few powers forbidden by the New Jersey law. In Pennsylvania, Ohio, and Illinois, not more than two corporate purposes may be joined. In New Jersey, the corporation may give stock in

exchange for property at a fair value to be determined by the directors. There is no limit of indebtedness as there is in New York. The New Jersey law charges only twenty cents on each one thousand dollars of capitalisation for initial cost of incorporation—one-fifth the cost in Illinois, and one-sixth the cost in New York and Pennsylvania. The annual franchise tax in New Jersey is one-tenth of one per cent. on the par value of paid-up capital stock to $3,000,000; one-twentieth of one per cent. in excess of $3,000,000 but not exceeding $5,000,000, and $50 for each additional $1,000,000; Pennsylvania, on the other hand, charges one-half of one per cent. upon every dollar of valuation of capital stock, franchise, goodwill, and earning capacity, and requires elaborate reports to determine these values.

INCORPORATION IN "CHARTER-GRANTING" STATES

Still more startling in their liberality are the laws of Delaware and West Virginia. In New Jersey, stockholders are forbidden by law to hold meetings outside the State; and within the State there must be maintained the principal office, where shall be kept for the inspection of stockholders a book containing the name and address of each

officer and each stockholder in the corporation. The Delaware law, however, allows meetings of stockholders to be held anywhere. The West Virginia law not only allows meetings of stockholders to be held anywhere, but makes no provision for the principal office or for the registry-books, or for recording any change of location with the Secretary of State. The Secretary of State, for a personal fee, acts as the legal representative of the corporation within the State, and to this scanty source every stockholder who desires information must look. The method of taxation in Delaware is similar to that in New Jersey, but the rate is lower: the incorporation fee is fifteen cents on each one thousand dollars of capitalisation; and the annual franchise tax is one-twentieth of one per cent. on the first $3,000,000 of capital stock, one-fortieth of one per cent. on the excess of $3,000,000, and on the excess above $5,000,000, $30 for each $1,000,000. In West Virginia, a fixed annual license fee is required of all corporations irrespective of capitalisation, $10 per year in case the principal place of business is within the State, and $50 in case it is outside.

The stimulus to trust organisation, which this relaxation of corporation laws afforded, has al-

ready been seen in the development of combination. Most of the larger trusts incorporated under New Jersey laws, and a host of smaller combinations sought charters in one or another of the "charter-granting" States. Local trust companies hastened to provide the "home office" required of the new corporation by law. The Corporation Trust Company of New Jersey became the agent of seven hundred corporations with capital approximating $1,000,000,000. The New Jersey Corporation Guarantee and Trust Company represented five hundred companies with at least $500,000,000 capital. The New Jersey Registration and Trust Company became the agent of three hundred corporations with a capitalisation of $400,000,000. In accordance with the law, these companies kept the transfer-books of the corporations they represented, recorded all transfers of stock and displayed outside their buildings the name of each corporation on a large sign. The Corporation Trust Company of Delaware, in similar fashion, represented two hundred corporations. The increase of corporate industry which these easy devices stimulated has been enormous. The Industrial Commission has estimated the capitalisation of these new corpo-

rations to be from six billion to ten billion dollars. The capitalisation of the companies which actually composed combinations, and might fairly be called trusts, was over four billions. Although a large part of this sum was substituted for the shares of constituent concerns that were withdrawn from the market, the clear addition to the capitalisation of the country exceeded the capitalisation of all the manufacturing companies organised between 1860 and 1890.

THE TASK OF THE PROMOTER

The enormous capitalisation of the trusts was largely owing to the necessities of the situation. To effect a successful combination the services of an outside promoter were required. The stove manufacturers attempted to form a combination by caucus and failed. The National Biscuit Company, the American Tin Plate Company, and the American Sheet Steel Company were all organised at the request of the manufacturers by Judge William H. Moore, whose sole qualification was his ability to buy a manufacturer's business at a better price than the manufacturer would sell to his competitor turned promoter. In organising a trust, it would be fatal to let the

combining manufacturers know what was paid for their neighbour's business. As Judge Moore said, "Each manufacturer imagines his plant is better located, better than his neighbour's; he knows it is; he has no doubt about it." Accordingly, the promoter did not work on a commission, which would allow each party to the agreement to investigate the acts of his agent, but bought the properties and handled them as he chose. By the grace of lenient corporation laws, the promoter first provided himself with a brand new corporation of large capitalisation, into which as a trust he intended to combine his purchases. Then he went outside to organise a syndicate of bankers and financiers known as "underwriters," who furnished whatever cash he might need to purchase the different plants, and agreed to take a certain proportion of the stock of the new trust not taken by the owners or by the investing public. Thus fortified, he returned to the manufacturers who were seeking combination, and secured options to purchase their concerns either outright for cash or for stock in the new trust. In many cases the trust purchased the individual plants, and thus as a purchasing corporation became the owner of all the properties. More frequently, as has been seen, the trust

bought the stock of the constituent companies, and as a "holding-corporation" elected directors and officers and controlled absolutely the management. The underwriters supplied the promoter with the cash to pay for the properties or for the stock; and, in return, received stock in the new trust. The different parties to the whole transaction of promotion usually exchanged their cash and securities at the same place and time. The promoter bought the plants from the owners at one price and sold them to the investor at a higher price: and the bargains made beforehand with all the parties were consummated at once.

The reason for the excessive capitalisation of the trusts is now explained. Except in unusual flotations, the promoter offered to pay for the constituent companies with stock instead of with money. In the promotion of the American Tin Plate Company, cash was offered for every plant; but in the case of the American Potteries Company, negotiations were dropped because the owners demanded two-thirds in cash. Throughout the various combinations that led to the Standard Oil Company of New Jersey, the stock of the combining companies was replaced by substantially the same amount of trust stock. The Pittsburg Plate Glass Company paid for its

properties with an amount of stock equivalent to their cash value. The American Sugar Refining Company, however, paid for the stock of its constituent plants with several times the amount of their own stock. Distilleries that entered the Distillers' and Cattle Feeders' Trust were paid in trust certificates four times the cash value of the works: and in the promotion of the Standard Distilling and Distributing Company, six times the actual cash value was paid. The International Silver Company paid out forty-five per cent. of its capitalisation for works and merchandise, and the rest for "goodwill." The National Shear Company, controlling sixty per cent. of the output in the country, paid for its plants with stock exceeding five times their cash value. The common rule for trust capitalisation was to fix the amount of preferred stock at the cash value of the plant, machinery, and merchandise; and to issue at least as much more common stock, as capitalised "goodwill" and savings of combination. On this basis were organised the United States Rubber Company, the National Salt Company, and the International Paper Company. The cash options taken on the plants of the National Biscuit Company, the National Steel Company, and the American Steel Hoop Company included

"goodwill," as well as inventory value: but most of the owners accepted the alternative of the same amount of preferred stock with a like amount of common stock as bonus. A considerable amount of this capitalisation arose from the natural reluctance to sell out at less than the highest price. For the $320,000,000 of stock and bonds of the Carnegie Company the United States Steel Corporation is said to have had to pay $163,400,000 preferred stock and $155,200,000 of common and $304,000,000 in bonds. To eliminate the competition of Liggett and Meyer, who threatened to buy all the best tobacco in Kentucky on which the trust depended, the Continental Tobacco Company was obliged to buy them out for $12,500,000—one-sixth the total capitalisation of the trust.

THE WORK OF THE UNDERWRITERS

A considerable share of the capital stock went to pay the underwriters. In the case of the Standard Distilling and Distributing Company, the underwriting syndicate received, for each $100 in cash it advanced, $100 in preferred stock and $150 in common. As payment for discounting notes of the trust to the amount of $200,000, and continuing this discounting for

eighteen months, the banker of the National Shear Company was to receive $30,000 in preferred stock and $225,000 in common. J. P. Morgan & Co., who exchanged the stocks of the constituent companies into the Federal Steel Company, received for their pay $200,000. For advancing to the United States Steel Corporation $25,000,000 in cash, the underwriters received $52,600,000 in preferred stock and $54,200,000 in common. The great risk assumed by the underwriting syndicate was brought out in a hearing upon a suit to enjoin the conversion of $200,000,000 United States Steel preferred stock into bonds. The syndicate had agreed to take $100,000,000 of the bonds, paying for them with $80,000,000 preferred stock and $20,000,000 cash; and as commission was to receive four per cent. on the bonds issued. At the time of the hearing the syndicate had bought the required $80,000,000 of stock at an average price of 94: but the stock had already fallen to 88, a loss of $4,800,000 to the syndicate, and the chance of coming out even by selling the bonds at 94 was very precarious. In view of the serious risk of loss they ran, the commissions received by underwriters were not exorbitant. After paying the owners, bankers, lawyers, and appraisers, the re-

mainder of the capital stock went to the promoter. For the promotion of the American Tin Plate Company, Judge Moore received $10,000,000 of common stock; and for the promotion of the American Steel Hoop Company and the National Steel Company, $5,000,000 of common stock in each case. The promoter of the Standard Distilling and Distributing Company received $150,000 in common stock for each $100,000 advanced in cash. After the organisation of the Distilling Company of America there was left in the hands of the promoters, with which to secure $3,500,000 needed for working capital, $10,710,000 of preferred stock and $13,360,000 of common. The great reward of the promoter is commonly justified because of the unusual difficulty of his service. In spite of his highly paid talent, however, the capitalisation of the trusts—swollen by the heavy charges of combining owners, of underwriting syndicates, and of promoters—have attained dangerous proportions.

CAPITALISATION BASED UPON EARNING POWER

Over-capitalisation is the first great evil of modern trust organisation. Before the extent of this evil can be determined, however, the proper basis

for capitalisation must be found. Two opinions regarding this basis prevail. The more conservative view, enacted in the Porto Rican Corporation Act and only recently abandoned in the Massachusetts law, restricted the issue of stock to the value of the tangible assets in working capital. The Pittsburg Plate Glass Company was organised on this principle. The more popular view, however, sanctioned by the laws in most commercial States and followed by most of the industrial trusts, is to issue an amount of preferred stock equal to the properties as going concerns, and at least an equal amount of common stock to represent "good-will" and the savings of combination. In spite of the hostility this second opinion has aroused, it seems the better basis of capitalisation. There is no necessary connection between the amount of money invested in a mine and the value of the property. The value of the mine is determined by its production: and its production depends upon the percentage of the ore, the ease of working, the ability of the management, and the state of the market. Similarly, the value of a manufacturing plant is determined by its earning power: the output and the cost, to be sure, depend in some measure on the investment of money in machinery; but the state of the

market, the charges for transportation, and the ability of the management are the chief factors affecting the earning power. The American Chicle Company, owning the most valuable brands of chewing-gum in the country, finds its greatest asset in its trade-marks. Its preferred stock is three times its tangible assets, and its common stock is double the preferred: altogether, its capitalisation is ten times the value of the actual investment. Notwithstanding, the American Chicle Company earns six times the dividends on its preferred stock and has regularly paid over eight per cent. on its common. By Mr. Havemeyer's own testimony, the refineries of the American Sugar Refining Company, which is capitalised at $75,000,000, could be duplicated for $30,000,000. The "good-will" of the plants, however, and the value of the brands, especially the Havemeyer and Elder brands, have proved at least equal in value to the plants: the dividends of the American Sugar Refining Company, seven per cent. on the preferred stock and over seven per cent. on the common, together with the surplus reserve laid aside, show that the capitalisation does not exceed earning capacity. The true basis of capitalisation, accordingly, is the earning power of the combination. The

proper capitalisation is that which so adjusts the amount of securities to the earnings as to make the stock sell for its face value.

OVER-CAPITALISATION MEASURED BY THE STOCK MARKET

Over-capitalisation, therefore, is the condition in which the par value of securities exceeds their market value based on earnings. The United States Leather Company, which pays no dividends on its common stock and was long in arrears on its preferred, is over-capitalised. The par value of the securities of this company is $125,164,600, and the market value of these securities, in the judgment of the stock market, is about $51,000,000: the over-capitalisation of this trust, accordingly, is about $74,000,000. How remote is the bearing which the cash value of the plants has upon the capitalisation of the trust is strikingly shown in the United States Steel Corporation. In exchange for the stock of its constituent companies, this trust gave of its own stock an equivalent amount, and $74,373,035 more. At the formation of each of these concerns, however, there had been a capitalisation in excess of cash value. The properties composing the American Tin Plate Company, which repre-

sented a cash value of $18,000,000, were capitalised at $46,000,000. The National Steel Company, valued at $27,000,000, was capitalised at $59,000,000. The American Steel Hoop Company, representing a money investment of $14,000,000, was capitalised at $33,000,000. The capitalisation of the Federal Steel Company, fixed at $98,000,000, on the admission of its president exceeded by $31,000,000 the value of its separate concerns. The properties of the American Steel and Wire Company, capitalised at $80,000,000, on Mr. Morgan's estimate in 1898 were valued at $40,000,000. From the testimony of the officers themselves, it appears that the cash value of the plants entering the United States Steel Corporation—estimating the National Tube Company on the same basis as the American Tin Plate Company—was $278,570,200, and the "good-will" $178,500,000. Since the United States Steel Corporation increased this capitalisation by $74,373,035, $252,873,035 of its capital stock appears to be based on intangible assets. Still another comparison is that made by the United States Steel Corporation itself in purchasing the shares of the different companies. The common stock of all the constituent companies—excluding the Carnegie Company

and the Lake Superior Consolidated Mines, which have no preferred stock—amounts to $270,835,100. As the common stock added by the United States Steel Corporation represents "good-will," the total excess over the money invested in the plants is $302,118,963. The most striking comparison, finally, is afforded by the easy test of the investment market. The par value of the securities of the United States Steel Corporation, before the conversion of its preferred stock into bonds, was $1,404,000,000—$550,000,000 of which was seven per cent. cumulative preferred stock and $304,000,000 five per cent. gold bonds. The bonds have since sold at about 72, the preferred stock has fluctuated about 54, and the common stock has fallen to 10. In the opinion of the stock market, the proper capitalisation of the United States Steel Corporation is about $570,880,000, and the over-capitalisation is about $833,120,000, or nearly sixty per cent.

The measure of over-capitalisation which the stock market affords is not always perfect: but since it is made by men whose business it is to judge commercial values, it is the most accurate attainable. In business convenience, moreover, it is superior to the measure determined upon the

actual money investment as a basis. Had the United States Steel Corporation been capitalised according to the amount of money invested in its property, its capital might be $250,000,000 of seven per cent. preferred stock and $250,000,000 of common. The preferred stock might sell at about 150; and the common stock, which has now fallen to 10, on this basis of capitalisation could easily yield a twenty per cent. dividend, and accordingly might sell at about 300. The disadvantages of such a capitalisation, however, are considerable. Securities selling at such a high price are difficult to market: to protect investors against the risk which so considerable an investment involves, the stock must yield a disproportionately large return. The stockholder finds the high price a disadvantage: for when he wishes to turn his holdings into money he finds that he can get more for 100 shares returning a five per cent. dividend and selling at 100 than for twenty shares returning a twenty-five per cent. dividend and selling at 400. Because of the limited supply of the high-priced stock and the small group of its holders, the high-priced stock in point of security is not so safe as the stock that sells at about par. In a single week, the fluctuations of Standard Oil stock selling at about 670 were 25

points, while American Telephone and Telegraph selling at 127 varied only 2 points. The sense of the business community regards earning power as the proper basis for capitalisation. The extent to which the industrial trusts are over-capitalised may, accordingly, now be determined.

TABLE OF STOCK PRICES.

Name of Company.	Date of Organisation.	Price in Mo. of Listing.	Highest Subsequent Price.	Price Feb. 1, 1904.
Amalgamated Copper	1899			
Common	.....	96½	June, 1901, 130	50⅝
American Ice	1899			
Common	.....	39¾	April, 1900, 48¼	8
Preferred	.....	83½	Oct., 1899, 80¼	32
American Malting	1898			
Common	.....	27¼	Jan., 1901, 33⅝	4½
Preferred	.....	77 15/16	Jan., 1900, 84⅝	20
American Woollen	1900			
Common	.....	21⅞	Jan., 1901, 21⅞	10¼
Preferred	.....	76½	July, 1901, 82¾	70
International Paper	1898			
Common	.....	57½	Jan., 1899, 64¾	13½
Preferred	.....	90¾	Jan., 1899, 94	66½
International Silver	1898			
Common	.....	33⅛	March, 1899, 30	9
Preferred	.....	37¼	Aug., 1902, 62½	35
Rubber Goods Mfg.	1901			
Common	.....	33¼	May, 1901, 38¼	20¾
Preferred	.....	85	May, 1901, 90	79
Union Bag and Paper	1899			
Common	.....	40	April, 1899, 35¼	5½
Preferred	.....	85	April, 1899, 85½	50
United States Steel	1901			
Common	.....	44⅝	April, 1901, 55	10¾
Preferred	.....	94½	April, 1901, 101⅞	54¾

From this table of stock prices—selected as typical from among the larger combinations—the over-capitalisation of the trusts is apparent. When first listed on the Stock Exchange, they were regarded by investors as over-capitalised: even in the speculative period that followed, their earning power never justified the amount of their capitalisation; and after the fever of trust organisation had passed and the judgment of the market returned, the over-capitalisation, measured by the difference between the par value and the market value of the securities, appeared enormous. Of seventy-eight industrials listed on the New York Stock Exchange, the common stock of only two has rated above 50. The shrinkage in values which measures the spreading conviction of over-capitalisation has been half again as great as that which overtook securities in the hard years following 1893. The twenty-one leading industrials of the Exchange have shrunk over sixty per cent.: the loss which they alone have entailed on their shareholders is over a billion of dollars. The first sufferers in many cases were those who organised the trusts. In July, 1897, the promoters of the Distilling Company of America held $10,710,000 of preferred stock and $13,360,000 common, out of which they had only to secure $3,500,-

000 working capital for the combination. At the current market price of these securities, this left to the promoters as payment for their services stock worth $5,356,750. By December, however, the stock had so fallen that it could yield the promoters less than $500,000. The owners who had sold out their distilleries to the Distillers' and Cattle Feeders' Trust had a like experience. "They got a lot of certificates," explained General McNulta, "the value of which was probably two or three times the value of the distilleries they represented, but it said dollars on them and they felt rich and carried them along. At first the certificates went up and up, and by and by down and down until they got to be worth almost nothing; so that they went from the poor distilleries that they actually owned, but which produced some income for them, to a lot of paper trash that depreciated to a few cents on the dollar, and finally left them out of business." The affidavit of Mrs. Ora M. Jewel, in her suit to compel the restoration of the shares of the Hecker-Jones-Newell properties, which she had deposited with a promoter in exchange for an interest in the United States Flour Milling Company, shows that sometimes even the combining manufacturer is deceived by the over-capitalisation.

THE EXAGGERATION OF TRUST SAVINGS

The investor, however, is the person most harmed by over-capitalisation. The savings of combination are real, and deserve to be capitalised: but by over-capitalisation they have been over-stated to the investor. He has been assured by the prospectus of the International Paper Company that its pulp and paper mills produce from seventy-five to ninety per cent. of all news paper made east of Chicago: "Regarding competition, it can hardly be expected to prove successful if attempted, for the valuable water-power and timber-lands—400,000 acres of the latter being held —could not easily be duplicated or acquired." He has learned from Mr. Schwab's testimony before the Industrial Commission that the United States Steel Corporation has a monopoly advantage in coking coal: "We own something like 60,000 acres of Connellsville coal. You could not buy it for $60,000 per acre, for there is no more Connellsville coal. . . . This coal is very clearly defined and every acre of it is highly prized, and it is owned by these constituent companies *in toto*. There may be developments of coal in other directions, but nothing like this coal." These savings of combination, the in-

vestor considers, are sufficient warrant for large capitalisation: and by buying the stock of these combinations at a high price he registers his belief that the trusts are not over-capitalised. Hardly was the stock of the International Paper Company listed, however, when substitutes for the raw material of the trust were discovered: cotton-seed hulls, oat hulls, and bagasse produce good paper; and the magnolia-tree which grows everywhere in the South makes satisfactory wood-pulp. The Connellsville coal, which is low in sulphur and phosphorus and forms a coke that sustains weight in a blast-furnace without breaking down, had till lately possessed an immense advantage. The introduction of the by-product process, however, of coking coal in a high, narrow retort produces strong coke from most of the western Pennsylvania coals. The open-hearth process of steel manufacture, which is fast supplanting the Bessemer converter, permits the use of high sulphur coke. Since 1897 the Lackawanna Iron and Steel Company, the Cambria Steel Company, and the Maryland Steel Company, by purchasing coal-land at $200 per acre, have become independent of the Connellsville coke. For these and similar causes, the promise of extraordinary savings of combination, which the investor has

read in the prospectus and acted upon, has not been performed; and the discrepancy between the promise and the performance has measured his loss.

THE NEGLECT OF THE SURPLUS RESERVE

The deception of the investor, which over-capitalisation brings about, continues after the promotion of the trust, and often affects the financial management of the company. The accumulation of surplus reserve is the first rule of business finance. This surplus, reserved out of profits before dividends are distributed to stockholders, may be invested in equipment, or in securities of its own or other corporations, or may be held in cash. The purpose of the surplus reserve is to make the regular dividends of the company more sure. If the surplus be spent in equipment, the output and earnings of the concern will be increased; if it be invested in its own securities, the reduction in amount of annual interest claims will proportionately raise the dividend; if the surplus be held in cash or in the securities of other corporations, a fund is prepared from which to pay dividends in the lean years. Every company which seeks to gain an

investment standing must accumulate a reserve proportionate to the instability of its annual profits. The Pennsylvania Railroad, whose earnings are remarkably stable, sets apart for reserve an annual sum equal to the amount paid out in dividends. The Great Northern Railway, pursuing a similar policy, reserves a sum equal to thirty-six per cent. of its annual earnings. A company whose maximum and minimum of profits over a period of years varies fifty per cent. must accumulate twice the reserve of another company whose earnings fluctuate twenty-five per cent. As the fluctuation of earnings varies not only between industries but also within the same industry, only the most general rule for surplus reserve can be stated. The nature of the railway business makes the earnings of established roads more stable than the profits of established manufacturing companies. In the depression following 1893, the earnings of the Pennsylvania Railroad diminished fourteen per cent., while the earnings of a dozen standard industrials decreased forty-six per cent. The manufacturing company, accordingly, must reserve as large a percentage of earnings as the strongest railroad accumulates: in prosperous years a surplus of fifty per cent. reserved from the profits seems

none too great to provide against the small earnings of bad years. By such an accumulation of surplus reserve the Midvale Steel Company and the John B. Stetson Company have raised themselves to investment standing. Industrial trusts, however, with the exception of the earlier steel combinations, have been sadly remiss in this duty. Between 1898 and 1901, twenty-six of the principal trusts organised in this period reserved less than thirty-two per cent. of their annual profits: after three years of unusual prosperity, they had accumulated a surplus of only three per cent. of their capital stock. In 1903 the United States Steel Corporation, which had reserved out of its annual profits less than twenty-six per cent., had accumulated a surplus of only 5.6 per cent. of its capitalisation. Until they begin reserving adequate surplus the trusts cannot expect investment standing for their securities: and because of their over-capitalisation the trusts find the accumulation of an adequate reserve very difficult.

EXCESSIVE DIVIDENDS AND FLOATING DEBT

In order to keep up the value of inflated and speculative stock, dividends must continue to be paid. In three years of prosperity, twenty-six combinations earned an average of little more

than three per cent. annually on their enormous capitalisation: and to pay dividends on this capitalisation required two-thirds of all their profits. The passing of a dividend destroys the value of their stock: the decline of American Ice common from 48¼ to 8 and of United States Rubber common from 34 to 13 shows this axiom of speculation. So long as the organisers hold any of the stock, therefore, a policy of conservative dividends cannot be expected. The cumulative feature of most issues of preferred stock, furthermore, is an obstacle to the accumulation of surplus reserve. This provision, which guarantees the preferred shareholder that all unpaid dividends shall be made good before anything is paid on the common stock, compels the management to pay dividends on the preferred stock so long as the earnings are equal to that amount, and to avoid as the greatest calamity the passing of a cumulative dividend. The chagrin which the policy of accumulating a surplus reserve would arouse is shown by the experience of the International Paper Company. A dividend of one-fourth of one per cent. was declared on the common stock in November, 1898; and in February, 1899, it was announced that the purchase of competing concerns had required an unusual expen-

diture of cash, and a dividend of three-tenths of one per cent. was declared. Immediately the common stock fell twenty-five points. In the annual report in September it appeared that the company had invested as surplus reserve forty per cent. of its earnings in new mills, had established agencies abroad, had begun building a factory with an output of ten million paper bags, and had no difficulty disposing of its output. The company clearly was prospering, and the preferred stockholders received their six per cent. dividends; the common stock, however, whose annual dividends amounted to only 1.4 per cent., immediately fell fifteen points, and has since declined to 13½.

Over-capitalisation not only makes difficult the accumulation of surplus reserve; it also affords constant temptation to an increase of floating debt. It is rudimentary in accounting that floating debt should be accumulated for no purpose except to anticipate current receipts, or occasionally to anticipate the sale of stocks and bonds. By its violation of this rule the American Malting Company, which had incurred $3,000,000 of call-loans in the course of buying competing plants, was nearly forced into bankruptcy. The American Linseed Company, which is obliged to

pay cash for flaxseed bought several months before the oil can be sold, has frequently raised money by the increase of current liability. Were they not impelled by their over-capitalisation to pay out their profits in dividends, these companies might have accumulated sufficient surplus reserve to have defrayed these expenses. The American Ice Company, the International Silver Company, the Pressed Steel Car Company, and the United States Rubber Company have been conspicuously reckless in the creation of floating debt. All these companies within three years have paid dividends on their preferred stock equal in total amount to one-half of the bonds with which they have since retired their floating debt. The United States Steel Corporation maintains a safe balance of current assets over floating debt: but, at the same time that it pays large dividends on its stock, it borrows more money for construction. In "holding-corporations" like the United States Steel Corporation and the United States Rubber Company, whose income consists of dividends on stock of the constituent companies, there is great opportunity for secret borrowing. While the report of the "holding-corporation" shows a small floating debt, each constituent company may have current lia-

bilities, in the collection of which the assets of the constituent companies—and so of the "holding-corporation"—would be diminished. The United States Rubber Company, in its report of 1901, showed a floating debt of only $1,648,694, which was greatly exceeded by its quick assets. Shortly afterward it announced an issue of $12,000,000 of bonds to take up the floating debts of its constituent companies. During a period of prosperity, while regular dividends had been paid, the trust had secretly accumulated this large floating debt. A number of trusts, it appears, have borrowed money to pay dividends and have distributed profits which they have not earned.

THE DISTRUST OF THE INVESTOR

"Over-capitalisation," says Attorney-General Knox, discussing the dangerous features of trusts, "is the chief of these and the source from which the minor ones flow. It is the possibility of over-capitalisation that furnishes the temptations and opportunities for most of the others. Over-capitalisation does not mean large capitalisation, or a capitalisation adequate for the greatest undertakings. It is the imposition upon an undertaking of a liability without a corresponding asset to represent it. Therefore, over-capi-

talisation is a fraud upon those who contribute the real capital, either originally or by purchase, and the efforts to realise dividends thereon from operations is a fraudulent imposition of a burden upon the public." Over-capitalisation, it appears, does not harm the consumer by affecting the price of goods. Prices are always what the market will bring, and if fixed too high are inevitably reduced by new competition. The price of oil is no lower because the stock of the Standard Oil Company sells at 670, nor is the price of steel billets higher because the common stock of the United States Steel Corporation sells at 10. Over-capitalisation injures the shareholder, the value of whose stock shrinks in proportion to his disillusionment. It stirs the distrust of the investor, who, the Industrial Commission found, has preferred to pay an increasingly high price for railroad securities yielding 4¾ per cent. on their market value rather than to risk his money in industrials that yield eleven per cent. on their market price. By throwing discredit on the most productive industries in the country, over-capitalisation injures the State.

Over-capitalisation—defined as capitalisation in excess of earning capacity, and measured by the difference between the par value and the market

value of securities—is the evil of present trust organisation: though it does not harm the consumer, its injury to the investor accomplished by the neglect of surplus reserve, the creation of excessive floating debt, and the distribution of unearned dividends is alarming. The development of railroad industry, as the experience of the Northern Pacific, the Union Pacific, and the Atchison, Topeka & Sante Fé railways shows, was accompanied by the same over-capitalisation and reckless management; and, though the railways eventually rose from a speculative basis to an investment standing, by the inevitable dominance of sound business methods, the loss to investors in the long series of financial spasms and reorganisations was enormous. A better management is just as surely inevitable, in the natural course of events, in the case of the industrial trust. But, in the meantime, if there be any statutory means of hastening that result, it should be formulated. Railway discrimination, among the evils of practical monopoly, stood out as the one evil that is not self-corrective. Over-capitalisation, among the evils of modern trust organisation, is the evil that least slowly corrects itself. To the cure of these ills some statutory remedy must be applied.

CHAPTER FIVE

THE HISTORY OF ANTI-TRUST LEGISLATION

The common law for five hundred years has discouraged restraint of trade. At the beginning of the fifteenth century it condemned any agreement by which a person bound himself not to exercise his trade—forbade, in other words, the sale of the "good-will" of a business. A few centuries later, it relaxed so far as to allow such restraints for a limited time and space. And, in the present century, it abandoned these arbitrary limitations and substituted the simple test of reasonableness; —if the extent of the business whose "good-will" was being contracted away warranted so considerable a restraint of trade, the law was satisfied. For the last three hundred years, the common law has also condemned monopoly. The monopoly which it first condemned was the legal monopoly which Queen Elizabeth sought to grant in certain manufactures—a monopoly similar to that of present patent laws, but without the merit of in-

vention to justify it. By the zeal of Parliament, monopoly by royal patent was abolished; and the condemnation of the common law was then directed against private enterprises, which by their restriction of competition threatened to become partial monopolies. Any restriction upon competition—the rule has come to run—which results or tends to result in the control of a substantial portion of a commodity is monopoly, and consequently illegal. As their occurrence in the law was separate, so were the penalties of these illegalities distinct. Agreements in restraint of trade were not punished as criminal offences, but were merely unenforceable at law in case the parties chose to break them. Monopolies, however, were regarded as more dangerous to the State. They were thought by Elizabethan judges to result in the depreciation of product and enhancement of price, and accordingly were made criminal, and punished by fine and imprisonment. Later events have done much to confuse restraint of trade with monopoly. Since monopoly was a crime, a conspiracy to monopolise was at common law a crime. Parties entering into an agreement in restraint of trade, the effect of which would be to monopolise a commodity, were not only denied the aid of the courts in enforcing their agree-

ment, but were also punishable as criminals, by fine and imprisonment. The fundamental distinction between restraint of trade and monopoly was nevertheless continued; and the distinguishing test of each remained the same. So stood the law, until the growth of combination called forth the first hostile legislation.

ANTI-TRUST LAWS NEUTRALISED BY THE "CHARTER-GRANTING" STATES

The enactment of the Interstate Commerce Act by Congress in 1887, prohibiting pools among the railways, induced State legislatures to interfere with the industrial combinations. In 1889, Kansas, Maine, Michigan, Missouri, Nebraska, North Carolina, Tennessee, Texas, and the Territories of Idaho, Montana, and North Dakota passed anti-trust laws; and the new States of Washington and Wyoming introduced similar provisions into their constitutions. In 1890, Iowa, Kentucky, Louisiana, Missouri, and South Dakota passed anti-trust laws. In 1891, Kentucky and Missouri introduced anti-trust provisions into their constitutions, and Alabama, Illinois, Minnesota, and the Territory of New Mexico enacted similar laws. New York and

Wisconsin followed in 1892; and in 1893 California forbade combinations in live-stock, and Nebraska forbade combinations in coal and lumber. Thirty States and two Territories subsequently passed such laws, and in seventeen States anti-trust provisions were inserted in the State constitutions. The extent to which the common-law definitions of monopoly and of restraint of trade were stretched may be seen in a summary of this legislation. In twenty-one States, it was criminal for two or more persons to enter into any agreement—regardless of whether it were reasonable or unreasonable—whereby free competition in production and sale was prevented. In seventeen States, it was criminal conspiracy for two or more persons to agree to regulate the quantity or the price of any article to be manufactured, mined, produced, or sold—regardless of whether prices were raised or lowered. In sixteen States, it was criminal for two or more persons to attempt to monopolise any commodity. In Missouri, it was criminal conspiracy to maintain a trust, pool, combine, agreement, confederation, or understanding to regulate prices or to fix the quantity to be made or sold, or to fix the premium for fire insurance. In Mississippi, it was criminal conspiracy not only to regulate

prices but also for two or more persons to settle the price of an article between themselves, or between themselves and others. In Texas, these practices were punished by imprisonment of one to ten years in the penitentiary, by a fine of $200 to $5,000 for each day of the offence, or by both; and if the offender were a corporation, by a fine of $200 to $5,000 and by forfeiture of its franchise. This particular punishment, however, seldom availed. While other States passed anti-trust legislation, New Jersey, Delaware, and West Virginia, by relaxing their corporation laws and inducing trusts to incorporate under them, caused an unprecedented rush to combination. The forfeiture of a corporate franchise can be enforced only in a State where the company is incorporated, and only in case the laws of that State have been violated. Ninety-five per cent. of the trusts were incorporated in New Jersey, Delaware, and West Virginia, and in these States no anti-trust statutes had been passed. By the commercial comity guaranteed among the States by the Federal Constitution a corporation legalised in a single State can trade unmolested across State lines. Trusts declared illegal by the laws of one State, accordingly, organised in New Jersey, Delaware, or West Vir-

ginia, where no anti-trust statutes troubled, and continued their interstate business undisturbed.

THE FEDERAL ANTI-TRUST ACT OF 1890

To block this last way of escape, an attempt was made in 1890 to give the Federal Government power to suppress combinations. Under the Constitution, Congress has no jurisdiction over commerce entirely within a State: the Sherman Anti-Trust Act was accordingly phrased, "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared illegal." Every person engaged in such a transaction, or "who shall monopolise or attempt to monopolise or combine with any other person or persons to monopolise" was punishable with a fine not exceeding $5,000 or with imprisonment not exceeding one year, and must pay to the aggrieved party threefold damages. The Circuit Courts of the United States were given power to restrain violations of the act, and to the law officers of the United States was assigned the duty to institute proceedings. Three years before, the Interstate Commerce Act had forbidden interstate rail-

ways to enter into any combination for the determination or pooling of rates, and had fixed heavy penalties upon the railways granting discriminations. Construed with the enlarging amendments added by the Wilson Tariff Act of 1894, the Sherman Anti-Trust Act, together with the Interstate Commerce Act, comprehended the anti-trust legislation of the Federal Government.

THE ILL-SUCCESS OF STATE ANTI-TRUST LAWS

Throughout the nineties the courts were busy interpreting anti-trust legislation. Under the common law, as has been seen, monopoly was criminal when it controlled so large a supply of commodities as to be dangerous, and restraint of trade was illegal whenever it became unreasonable. Consciously or unconsciously, the statutes had stretched these definitions. Framed with the purpose of destroying existing combinations, they went far in their specific terms and in their reference to modern conditions toward literally forbidding innocent associations among individuals. Under the common law, contracts in partial restraint of trade whenever reasonable were upheld: under the anti-trust statutes, such con-

tracts, although reasonable, were not only unenforceable but subjected the parties to punishment for criminal conspiracy. Under the Illinois Anti-Trust Act, the Distilling and Cattle Feeding Company, to which as a purchasing corporation the manufacturers previously united in the Distillers' and Cattle Feeders' Trust had conveyed their properties, forfeited its charter in 1895.* Under the same act the American Glucose Company of New Jersey—a constituent member of the Glucose Sugar Refining Company, which controls ninety-five per cent. of the output of the country—was forbidden to purchase the properties of six Illinois companies: "Citizens of Illinois," said the court, "cannot evade the laws of Illinois passed against trusts and combines and defy the public policy of the State by going into a foreign state and chartering a corporation to do business in this State in violation of its laws. When these foreign corporations come into this State to do business, they must conform to the laws and public policy of the State. . . . Any combination of competing corporations for the purpose of controlling prices, or limiting production, or suppressing competition is contrary to public policy and void. It makes no differ-

* Distilling and Cattle Feeding Co. *vs.* People, 156 Illinois, 448.

ence whether the combination is effected through instrumentality of trustees and trust certificates, or whether it is effected by creating a new corporation and conveying to it all the property of the competing corporations."* Under the Anti-Trust Act of Missouri, seventy-three insurance companies were deprived of the right to do business within the State, because their agents through an association enforced uniform rates of premium.† In accordance with the same act the National Lead Company, a holding-corporation controlling the manufacture of seventy-five per cent. of the white lead of the United States, was forbidden to collect the price of goods purchased by its customers in Missouri.‡ Under the New York Anti-Trust Act, a corporation which had bought eighty-five patents of various harrows and had contracted with the owners, under restrictions regarding the selling price, to continue manufacturing, was not allowed to enforce its contracts.§ A member of the Rochester Coal Exchange, which fixed its schedule of prices for its members,

* Harding *vs.* American Glucose Co., 182 Illinois, 551.

† State *vs.* Firemen's Fund Insurance Co., 152 Missouri, 1.

‡ National Lead Co. *vs.* Grote Paint Store Co., St. Louis (Mo.) Court of Appeals, May 2, 1899: quoted in Report of Ind. Com., II., 159.

§ National Harrow Co. *vs.* Bement, 21 App. Div. (N. Y.), 290.

made a contract with a customer to supply in the future large installments of coal at schedule price; after receiving part of the coal the customer refused to accept the rest: and under the Anti-Trust Act the contract was held unenforceable.* The furthest extent to which anti-trust legislation was carried was in Texas. A brewing company which had agreed to supply a combination of dealers in El Paso to the exclusion of others in the city was allowed to recover nothing, either for breach of contract or in payment, for the beer already furnished.† A contract of lease of premises for five years, with provisions that no one beside the lessee should be allowed to carry on a similar business on the land and that the lessor should issue to his employees checks redeemable in the lessee's business and should take as rent a fixed share of the profits, was held unenforceable.‡ A manufacturer who had supplied his customer with a delivery-wagon and a storage-vault, on condition that the customer handle goods of no other manufacturer, was allowed to recover nothing for the goods he had furnished.§ The constitutionality of these laws was frequently

* Drake *vs.* Siebold, 81 Hun (N. Y.), 178.

† Houck *vs.* Anheuser-Busch Brewing Association, 88 Texas, 184.

‡ Texas and Pacific Coal Co. *vs.* Lawson, 89 Texas, 394.

§ Texas Brewing Co. *vs.* Templeman, 90 Texas, 277.

denied by the courts: the Anti-Trust Acts of Illinois and of Texas, by reason of the exception which they made of special industries, were held unconstitutional:* and on similar grounds the anti-trust legislation of Georgia, Indiana, Louisiana, Michigan, and Tennessee exempting dealers in agricultural products and live-stock is clearly defective. Reviewing the entire course of State legislation and decision, the Industrial Commission concluded: "Possibly the fear of a new form of business organisation may have led to the extension of legal interference of private business beyond what the public welfare demands. Some of the statutes, if read literally, would seem to forbid many perfectly innocent associations among individuals, but the courts have generally assumed that only monopoly—at least virtual monopoly—was attacked, and the decisions have been made accordingly."

THE DISAPPOINTING RESULTS OF THE FEDERAL ANTI-TRUST ACT

Meantime, the interpretation of the Sherman Anti-Trust Act was more halting. In his report

* Connolly *vs.* Union Sewer Pipe Co., 184 U. S., 540; State *vs.* Shippers' Compress and Warehouse Co., 67 Southwestern Rep., 1049.

for 1893, the Attorney-General of the United States, who had received several rebuffs in attempting to apply the act, expressed the opinion that the act was unconstitutional. An exact definition of the punishable acts he considered impossible: and what the statutes said about monopolies and agreements in restraint of trade applied quite as well to individual business transactions. In support of his contention that the act was invalid, he cited the conclusions of a district judge recently raised to the Supreme Court: "Congress cannot limit the right of State corporations or of citizens in the acquisition, accumulation, or control of property; Congress cannot prescribe the prices at which such property shall be sold by the owner, whether a corporation or individual; Congress cannot make criminal the intents and purposes of persons in the acquisition and control of property, which the States of their residence or creation sanction; monopoly, as prohibited by the statute, means an exclusive right in one party coupled with a legal restriction or restraint upon some other party which prevents the latter from exercising or enjoying the same right; and contracts in restraint of trade and commerce, as prohibited, are contracts in general restraint thereof, and such as would be void at common law inde-

pendently of any statute." The proceedings undertaken by the Government against the American Sugar Refining Company, in 1895, seemed to support this despairing opinion. The trust, controlling most of the sugar refineries in the United States, purchased stock in four Philadelphia refineries and attained practical monopoly. In its opinion denying the suit to set aside these purchases, the court held that the monopoly, if any existed, was a monopoly of the *production* of sugar within the State and not of its sale or *commerce* among the States: and monopoly of production bore only an incidental and indirect relation to commerce, and accordingly was not within the prohibition of the Sherman Anti-Trust Act.* The way seemed clear for a decision going the full length of the Attorney-General's opinion; but in 1897 and 1898 the court faced the question of constitutionality and upheld the act. A number of interstate railways combined in the Trans-Missouri Freight Association and the Joint Traffic Association "for the purpose of mutual protection by establishing and maintaining reasonable rates." In its opinion declaring these agreements a violation of the Anti-Trust Act, the court held that the act forbade all agreements,

* U. S. *vs.* E. C. Knight Co., 156 U. S., 1.

whether the restraint was reasonable or unreasonable, and that such an act was within the power of Congress.* The question raised by the Knight case concerning the scope of the act—which in terms included all interstate commerce—remained to be solved. The definition made by the successive decisions was devious, even to lawyers. An association doing business in the Kansas City stock-yards, partly in Kansas and partly in Missouri, whose members received live-stock from other States, sold them, and after deducting charges, accounted to the owners for the proceeds, was held by the court to be engaged in business of local and not interstate character, and so not subject to the Anti-Trust Act.† In the case of another association in Kansas City whose members purchased live-stock on the market—instead of selling on commission as in the former case,—the court refused to say whether the business were of an interstate character; and decided that the rules of the association, against which the suit of the Government was directed, so remotely affected interstate commerce that they could not be regarded as a restraint of trade.‡

*U. S. *vs.* the Trans-Missouri Freight Association, 166 U. S., 220; U. S. *vs.* Joint Traffic Association, 171 U. S., 505.

†U. S. *vs.* Hopkins, 171 U. S., 578.

‡Anderson *vs.* U. S., 171 U. S., 604.

In the midst of these nice distinctions, it is easy to understand why the advisory counsel of the Industrial Commission warned the members not to undertake a definition of interstate commerce. Within the clearly defined field of interstate commerce, the Anti-Trust Act was effective enough. The Addyston Pipe Pool, composed of manufacturers of cast-iron pipe supplying thirty-six States, had agreed not to compete among themselves: whenever bids were called for, the pool set the price and assigned the job to the manufacturer that gave the highest bonus for it, while the other members put in higher bids to maintain the appearance of competition. This combination, directly restraining the sale of pipe between the States, was peremptorily broken up by the enforcement of the Anti-Trust Act.* The greater number of trusts, however, were in the position of the sugar trust or the live-stock associations of Kansas City—sufficiently complex in their operations to prove themselves local enterprises when the jurisdiction of the Federal Anti-Trust Act was invoked, and to appear demonstrably interstate businesses when State anti-trust acts became harassing. "The cases," complained Attorney-General Knox, "show how little is now

* Addyston Pipe and Steel Co. *vs.* U. S., 175 U. S., 211.

left for the statute to operate upon. It is not enough, it seems, that a trust or corporation owning corporations exists or that it is engaged in interstate or foreign commerce, for its mere engaging in commerce is not prohibited, or that it monopolises production throughout the country, or that it is formed to restrain or monopolise business within a State, or that by any of these things it indirectly affects interstate commerce with a practical restraint or monopoly, to bring the corporation or its particular transaction within the emphatic clauses or under the drastic penalties of the anti-trust law. What seems necessary is to establish, by legal proof in court, a combination for the direct or restraining of what is strictly interstate commerce, and to prove this against combinations whose affairs are conducted upon the best legal advice as to what is and what is not obnoxious to the law, by methods secret or ingeniously contrived to avoid the letter of the law."

THE EVOLUTION OF THE COMMON LAW: FROM LOOSE COMBINATION TO SINGLE OWNERSHIP

Side by side with decisions of the State courts construing State anti-trust laws, and of the Federal courts construing the Sherman Anti-Trust

Act, had quietly grown up a body of common-law authority of far greater import. The definitions of monopoly and of restraint of trade evolved by the common law took on new significance when applied to new conditions: in connection with a few old principles of law, they accomplished more than the much-discussed statutes. The course of combination, it has appeared, was from the pool to the "trust agreement"; from the "trust agreement" to the "holding-corporation" owning only the stock of the constituent companies; and from the "holding-corporation" to the absorbing or purchasing corporation owning the actual plant and properties of the constituent companies. This progress from loose combination to single ownership, it must now be shown, was due to the growing body of common-law decisions. Starting with the simple rule, that acts which constituted monopoly and restraint of trade, when done by individuals, constituted the same offences, when committed by corporations; and with the further rule, elementary in corporation law, that a partnership of corporations is illegal; the common law, step by step, had forced combination to a sounder basis. A corporation engaged in manufacturing cotton-seed oil entered a pool and entrusted its management for two

years to the committee of the pool: had the result been a monopoly of the product, the transaction would have been punished as criminal; since the corporation had attempted to form a partnership, the court held that, regardless of the question of monopoly and restraint of trade, the contract was void.* Had the contracting party been an individual, instead of a corporation, the contract would have fallen within the definition of the restraint of trade, and for that reason become unenforceable. By such reasoning, the common law made the pool form of combination impossible. The shareholders of several sugar refineries handed their stock over to a board of trustees, and received in exchange "trust certificates." The shareholders, by their unanimous action, however, had in effect brought about a partnership between the several corporations; and for this reason their charters were annulled and the Sugar Refineries Company failed.† Since the result of their transaction was a monopoly of the product, it was punishable as criminal; and had the result of their act been unreasonably to restrain trade—as the proceedings against the Standard Oil Trust showed,—the transaction would have

* Mallory *vs.* Hinaur Oil Works, 86 Tenn., 598.

† People *vs.* North River Sugar Refining Co., 121 N. Y., 582.

been held void.* Concerning the validity of "holding-corporations," also, the common law was pronounced. The Chicago Gas Trust Company, which sought to control the gas companies of Chicago through ownership of their stock, was held to be merely a form of agreement between the individual stockholders in unreasonable restraint of trade, and consequently invalid.† Only in those States where anti-trust legislation had not been passed, where public policy favored combination, and where corporation laws specifically granted power to purchase stock of other corporations were "holding-corporations" valid. These conditions, however, were assembled in New Jersey and Delaware: and as ninety-five per cent. of the trusts were incorporated in these States, while outside their domicile-State the question of their validity was unlikely to arise, these two snug-harbors seemed sufficient. Regarding the validity of purchasing corporations, which bought not the stock but the properties of their constituent companies, the common law showed a division of authority. The Diamond Match Company, which had bought outright the properties of most of the concerns engaged in the

* State *vs.* Standard Oil Co., 49 Ohio St., 137.

† People *vs.* Chicago Gas Trust Company, 130 Illinois, 268.

manufacture of matches, was declared in Michigan to be an illegal monopoly.* In New Jersey, on the other hand, the Trenton Potteries Company, which had purchased most of the potteries manufacturing sanitary ware in the United States, was held entirely legal.† By the trend of common-law decisions, the pool and and the "trust agreement" were clearly illegal; the "holding-corporation" in most jurisdictions was illegal; and the absorbing or purchasing corporation was illegal according as an individual, possessing in similar degree the control of the commodity, would come within the common-law definition of monopoly.

THE FUTILITY AND LAXITY OF STATE AND FEDERAL LEGISLATION

In 1902, the Industrial Commission reviewed in its Final Report the State and the Federal legislation, and the decisions interpreting the statute and the common law regulating trusts: "In the United States," it said, "there has been much legislation regarding industrial combinations, but very little seems to have had much effect. . . . The common law is sufficient to enable learned

* Richardson *vs.* Buhl, 77 Michigan, 632.

† Trenton Potteries Co. *vs.* Oliphant, 58 New Jersey Eq., 507.

judges to protect the welfare of the people against monopolies that can be clearly proved against public policy." Two features of the situation strongly impressed the Commission: the effectiveness of the common law as contrasted with the existing statute law; and the increasing laxity of State corporation laws, which more than neutralised the added penalties of anti-trust statutes. "It is a striking fact," the Commission deplored, "that not one of these statutes aims specially at securing publicity regarding the business of the large industrial combinations, through detailed reports, in order that the publicity itself may prove a remedial measure. . . . The corporation laws of the several States of the United States have been generally drafted so as to encourage as much as possible the organisation of corporations. It is important to observe that when any State has put conservative restrictions upon corporations, either as to their formation or their management, other States have taken advantage of the situation and enacted such liberal laws that corporations have removed to them from other States. Two or three States have, apparently for the sake of securing a certain revenue easily collected, bid against each other by offering more liberal inducements to cor-

porations. This demoralising tendency in corporation legislation and the great variety of corporation laws in our forty-five States and four Territories make the task of controlling corporations exceedingly difficult. The Federal Constitution does not permit any State to interfere with commerce between the States, so that, however wise and careful one State may be in its corporation legislation, it cannot prevent interstate corporations of other States from engaging in interstate commerce."

THE ACTIVITY OF ATTORNEY-GENERAL KNOX

Still another informing view was afforded in the conditions revealed by Attorney-General Knox. Early in 1902, the Interstate Commerce Commission reported that certain railways of the Middle West had for years unlawfully granted to favoured grain-buyers rates lower than those imposed upon smaller dealers, so that at the present time there was practically only one buyer on each system, who prevented competition and arbitrarily fixed the price for the producer. At the same time, the Commission reported similar abuses in the carrying of packed meats and of cotton. Immediately the Attorney-General asked for in-

junctions restraining these practices as violations of the Federal Anti-Trust Act and of the Interstate Commerce Act, and temporary injunctions were granted. Unusual changes in the price of meats directed attention to the six great meat-packers of the country—commonly known as the "Beef Trust." At the request of the Attorney-General, these concerns were restrained from collusively raising and lowering prices through their agents, from requiring their purchasing agents not to bid against one another, and from the practice of bidding up the price of live-stock for a few days to induce large shipments and then ceasing when the shipments arrived. In 1901, the Northern Pacific and the Great Northern railways, the only competitors for the traffic for most of the States they traversed, purchased the Chicago, Burlington & Quincy system; and immediately after, the principal shareholders of these two great roads organised the Northern Securities Company, whose $400,000,000 was to be used in purchasing the stock of the Northern Pacific and the Great Northern railways. Relying on the Anti-Trust Act, the Attorney-General proceeded against the Northern Securities Company, the two railway companies, and the principal stockholders, and

asked for an injunction restraining the "holding-corporation" from exercising control over the railway companies. In his three attacks on combination, the Attorney-General revealed new embarrassments in the enforcement of anti-trust legislation. In attempting to restrain discriminations in the grain, the meat, and the cotton traffic, he found that the law had penalties for the railroads that granted discriminations, but none for the favoured shippers who had been enabled to crowd out all competitors and to attain trust proportions. In pressing the suits against the meat-packers and the Northern Securities Company, he found the ordinary progress of the courts too dilatory for public convenience. In each prosecution the secrecy attending the operation of the trusts defied investigation. In a letter to the chairman of the Senate Committee on the Judiciary, January 3, 1903, the Attorney-General reviewed the situation and called attention to its difficulties.

THE FAILURE OF OLD REMEDIES AND THE NEED FOR NEW

The result of sixteen years' experience in the control of combination—from the Interstate Commerce Act of 1887 till the letter of Attorney-

General Knox in 1903,—was disappointment. State anti-trust legislation, so far as it served to regulate trusts, had merely restated the common law. Federal anti-trust legislation, by overstepping the common law and declaring combination in reasonable restraint of trade illegal, had provided a weapon too dangerous to the innocent to be freely used against the guilty. The common law alone, by driving combination from the loose pool to the single purchasing corporation, had really curbed the trusts. State legislation, which controlled only such trusts as incorporated or were engaged in local business within its jurisdiction, missed most of the combinations: ninety-five per cent. of the trusts were incorporated where there were no anti-trust statutes, and practically all were ready to prove themselves engaged in interstate and not in local business. Federal legislation, applying only to interstate commerce, had been so narrowly interpreted that every manufacturing trust might reasonably hope to escape. While State and Federal legislation seemed likely to fall of its own weight, the States of New Jersey, Delaware, and West Virginia, by passing no anti-trust measures and by relaxing their corporation laws to unprecedented extremes, provided refuge for the trusts and neu-

tralised what force remained in State and Federal anti-trust statutes. In the uneven contest between the "charter-granting" States and the anti-trust legislation, the former protected combinations under their charters. By their incorporation fees and franchise taxes, they obtained a revenue that neighbouring States already coveted—and with envy there came a deterioration in the corporation laws of other States. Sixteen years of experience of attempted regulation had added new evils. Larger than ever, the question loomed in the public mind: Under the Constitution, which provides for a division of authority between the Federal and the State governments, how may the ills of practical monopoly and the ills of present trust organisation, which have thus far not proved self-corrective, be cured by statute?

THE RECOMMENDATIONS OF THE INDUSTRIAL COMMISSION AND OF ATTORNEY-GENERAL KNOX

1902–1903

The Preliminary Report of the Industrial Commission in 1900, the Final Report in 1902, and the letter of Attorney-General Knox in 1903 all advised certain Federal measures in the direction of trust regulation. They suggested that the

Interstate Commerce Act be so amended that shippers profiting by discriminations might come within its penalties. They advised an act to expedite decisions in prosecutions under the Interstate Commerce Act and the Sherman Anti-Trust Act. They united in support of a statute requiring publicity for all trusts engaged in interstate commerce. Acting upon this advice, Congress in 1903 passed the measures recommended. The Elkins Law facilitated prosecutions under the Interstate Commerce Act, by providing that not only the agents but also railroad corporations which grant discriminations should be punishable: by this means, the agent who testified to the discrimination might be released as a Government witness from prosecution, while the offending corporation might still be held. It also made the shipper who accepted rates below the published schedule jointly liable in every case with the railroad. During the same week, an act to expedite the determination of cases involving the Interstate Commerce Act and the Sherman Anti-Trust Act was passed, pursuant to the recommendation of the Attorney-General. By the Nelson Amendment to the act creating the Department of Commerce, a Bureau of Corporations was organised, whose commissioner should

have power, under the direction of the Secretary, to make "diligent investigation" into the management of corporations engaged in interstate or foreign commerce (railroads excepted), and to publish "as much thereof as the President may direct." The more radical recommendations of the Industrial Commission and of the Attorney-General were not enacted. No attempt was made to redistribute the control of trusts between the State and the Federal governments. Restricted as the scope of the Anti-Trust Act had been, no attempt was made to enlarge the narrow confines fixed by judicial decision. "If the Sherman Act exhausts the power of Congress over monopolies," the Attorney-General had said, "the American people find themselves hopelessly impotent, facing a situation fraught with the most alarming possibilities with which neither the Federal nor State governments can deal." Yet, beyond stopping an obvious gap in the Interstate Commerce Act and providing for more speedy determination of anti-trust suits, no statutory remedy was provided. The report of the Industrial Commission, accompanied by four volumes relating to combinations, had impressively shown the complexities of the trusts. The activity of the Attorney-General had shown how bewilder-

ing were the embarrassments of trust regulation, under the peculiar division of power between the Federal and State governments which the Constitution imposes. As the difficulties of the problem became more clearly defined, suggestion grew more sober and cautious. Anti-trust legislation by the States, combined with irresponsibility in State corporation laws, had quite bungled in the regulation of trusts: the Sherman Anti-Trust Act and the Interstate Commerce Act, even when amended, were narrow and uncertain in their operation. The common law, which had driven trade combination from the pool to the "trust agreement," and from the trust agreement to the "holding-corporation," was now so overlaid with cumbering anti-trust legislation that its direction seemed ambiguous. Any ultimate answer to the trust question must involve the governmental principles and the commercial forces of the nation. By bringing home the transcending importance of the problem, the report of the Industrial Commission accomplished the first step in its solution. By the activity with which he turned to account the slender legislation at his disposal, the Attorney-General achieved a further step.

THE DECISION OF THE NORTHERN SECURITIES CASE

1903

Under the provisions of the act expediting suits based on the Sherman Anti-Trust Act, the Circuit Court of Appeals determined in April, 1903, the suit of the Attorney-General against the Northern Securities Company, the Great Northern and the Northern Pacific railways and the principal stockholders of these railways. Individuals owning a majority of the stock in the two competing railways had organised the Northern Securities Company, had sold to the latter their railway stock, and had received in payment the stock of Northern Securities Company. Like all "holding-corporations," the Northern Securities Company voted the stock of the two constituent companies, elected to the separate boards of directors representatives who prevented competition between the two railways, and entirely controlled the two systems. This was in effect a combination among the organisers of the Northern Securities Company to restrain competition between the Great Northern and the Northern Pacific railroads, and to monopolise through the incorporation of the Northern Securities Com-

pany the transportation facilities of the Northwest. The fact that these individuals had ingeniously put the control of the railway companies into one legal entity, the "holding-corporation," instead of keeping it in the combination of individual ownership, did not change the sin of combination. Under the cover of incorporating, these men had combined to restrain trade and to monopolise transportation. Superficially, the Northern Securities Company seemed merely an individual—a big shareholder owning ninety-six per cent. of the stock of the Great Northern and seventy-six per cent. of the stock of the Northern Pacific railways. Really, the owners of the Great Northern and the Northern Pacific railroads, combining to form the Northern Securities Company and becoming the owners of the "holding-corporation," by acting together, had first of all constituted a combination among themselves; and, after the Northern Securities Company was organised, by controlling the two railroads through the "holding-corporation," they had created a combination between the Northern Securities Company, the Great Northern, and the Northern Pacific railroads. Just as the cloak of the "trust agreement" did not shelter the parties thereto from the penalties of combination in restraint of

trade, so the cloak of a fictitious legal entity could not protect the incorporators from the consequences of their combination with intent to monopolise. The fact that the charter of the Northern Securities Company granted by New Jersey enabled the corporation to hold stock in any other company did not save the case. So far as it affected interstate commerce the "holding-corporation" was subject to Federal law: since the Sherman Anti-Trust Act had declared the purpose of the incorporators to be contrary to public policy and forbidden, no protection could be afforded by the terms of the charter. Accordingly, the Northern Securities Company was forbidden to vote the shares of the Great Northern and the Northern Pacific railways, and was permitted to return its holdings to their former owners.*

The significance of this case in the outlook for trust regulation was considerable. Although it arose under the Sherman Anti-Trust Act, the case was determined upon the logic of familiar common-law principles. Every jurisdiction can prevent, by common-law remedies, if there be no statute, the use of any property within its territory by any person in a way injurious to public

* 120 Federal Rep., 721.

welfare. The common law declares that combination to monopolise or *unreasonably* to restrain trade is injurious to public welfare. The Sherman Anti-Trust Act declares that combination to monopolise or *in any way* to restrain trade is injurious to public welfare. By either standard the combination of two parallel railway systems, which have always competed and have been forbidden to combine through their charters and by the States through which they pass, is injurious to public welfare. Both at common law and by the Anti-Trust Act, the combination effected through the Northern Securities Company was illegal. The limits of the decision, however, must be noticed. Had State legislatures and railway charters expressed no fear for the public welfare, the common law might well have determined that the Northern Securities Company had merely such monopoly as is inevitable in public carrying, and was only a combination in reasonable restraint of trade. In the absence of expressed fear for the public welfare, the monopoly of the Northern Securities Company would probably not have been in violation of the Sherman Anti-Trust Act: but since the act forbade combination in restraint of trade, reasonable or unreasonable, the court might have found it hard to

hold the Northern Securities Company legal. It was this conclusion that, in the opinion of some, threatened the validity of all recent railroad consolidation. But the difficulty seems unreal. Railroad consolidation effected by outright purchase of properties, by lease or by purchase of stock, has in most cases been specifically authorised both by the railway charters and by all the States concerned: from this evidence, the disproof of any restraint of trade is almost conclusive. The decision in the case of the Northern Securities Company added no new doctrine to the law. Further than to state the application of the Sherman Anti-Trust Act to a combination of individuals working under corporate charter, it did not enlarge the scope of trust regulation. By its elucidation of principles at a time when they were most obscured: by its assimilation of the "holding-corporation" to the illegal "trust agreement," and its statement of the common-law rules that make both invalid: and by the pregnant differences between combination under common law and combination under the Sherman Anti-Trust Act, which the opinion of the court suggested by these traits, the decision did much to determine the outlook for trust regulation.

CHAPTER SIX

THE OUTLOOK FOR TRUST REGULATION

Trust regulation—like every statutory remedy—is circumscribed by the constitutional powers of government. To understand proposed anti-trust legislation one must first know the limits bounding the authority of the State legislatures and Congress. The Constitution conferred upon Congress power "to regulate commerce with foreign nations and among the several States," and left to the several State legislatures the regulation of all other commerce. If a company be engaged in local business and not in interstate commerce, it is subject only to the control of the State of its creation. A foreign company, however, admitted within a State, may also be treated as a corporation of its own creation. In other words, a business company becomes subject to the laws of any State into which it goes, and within that State its operations may be regulated even to the extent of prohibiting it from doing busi-

ness. On the other hand, if it be engaged in interstate commerce, Congress alone may regulate it; nor can any State usurp that power by denying to the company the right to do business within the State or by controlling its interstate trade. Wherever the affairs of the concern are in any direct way connected with interstate commerce, the State has no control. Precisely where this distinguishing line between State and Federal authority runs, however, is difficult to say. Over its domestic corporations, by the powers generally reserved in the State constitution, the State can exercise any control short of confiscating the property without due process of law: it can impose limits to the amount and kind of property the corporation can acquire, determine the amount of stock, the method of paying for it, the method of transfer, the liability of members, and can provide that the corporation do business only within the State, or only without it. In dealing with foreign corporations, however, the line between State and Federal authority must be narrowly observed. Coming into a State and establishing an office to carry on regularly the corporate business is not interstate commerce, but is local business within the State; so, too, is the manufacture and sale of goods within the State,

even though the concern has distributed its plant over several States or intends to export all of its output: over these, the State and not Congress has control. On the other hand, selling or contracting to sell in one State to be shipped to another State, or invading another State with travelling men and selling therein is not local business within the State, but interstate commerce: over these, Congress and not the State has control. The States can regulate manufacturing corporations, but cannot regulate interstate trading corporations. The Federal Government can regulate interstate trading corporations, but cannot regulate manufacturing corporations. Most trusts, unhappily, are both manufacturing and trading corporations. Thirty States, two Territories, and the Federal Government have passed laws to regulate them: and three States, by incorporating the very combinations which anti-trust legislation has sought to control, have neutralised this regulation.

CONSTITUTIONAL AMENDMENT, PLACING ALL COMMERCE UNDER FEDERAL CONTROL

As a relief from the scattered control of State and Federal governments a constitutional amend-

ment giving Congress complete power over all commerce has been suggested. This plan was recommended in 1897 by the New York Trust Committee, and has been urged upon Congress by Mr. Jenkins, the chairman of the House Judiciary Committee. Such a change, to quote the Industrial Commission, "would prove centralising to a degree to most people unthought of in connection with our form of government." The entire business of the country would be removed from under the supervision of State officials—legislative, executive, and judicial—and placed under the control of Federal officers. Most of the business now done in the State courts would be transferred to Federal jurisdiction. The State judiciary, which has best expounded the business law of the community, and for more than a century has been the chief strength of the States in the Federal system, would lose its authority and its importance. Indeed, the very principle of combination against which it is directed would seem to be strengthened by such centralisation. Less radical suggestions have more recently been made. For purposes of comparison these may be grouped under three propositions: First, the Federal Government by act of Congress may give the States larger—perhaps exclusive—con-

trol of corporations engaged in interstate commerce. Second, the Federal Government may assume a larger—perhaps exclusive—control of corporations engaged in interstate commerce. Third, the present system of control by State and Federal governments may be continued with greater harmony of action and stricter control of the trusts.

THE EXTENSION OF STATE CONTROL OVER INTERSTATE COMMERCE

Congress may legally grant to the States the control of the companies engaged in interstate commerce. Congress in the past has empowered the States so far to interfere with interstate commerce as to forbid the sale of liquors imported into the State, and to subject explosives in transit through a State to the laws of the State. In like manner, as Professor Huffcut advised the Industrial Commission, an act of Congress might allow the laws of a State to control interstate trading companies. With this obstruction removed, the States could protect themselves by their own laws against trusts. As Mr. Stimson, advisory counsel of the Industrial Commission, suggested, the States might require the foreign corporation to

comply with certain conditions in its organisation —require its stock to be paid in cash, for instance, fix its debt below a certain limit, and make its directors or stockholders liable for its debt. Restrictions upon a foreign corporation doing interstate business might thus be made far greater than those on domestic corporations doing a local business: all corporations endeavouring to destroy local competition might be excluded from the State. "From the legal point of view," says the Industrial Commission, "such a remedy may be possible. To allow, however, each separate State to fix its own regulations for interstate commerce within its borders would, it is clear, result in a great variety of laws more or less conflicting in their nature, which would naturally hamper business. Some States, where there is a strong anti-trust prejudice, might go to the length of denying, to large corporations obnoxious to their views, the right to engage in business in the State at all. Moreover, the purpose of such legislation might be easily evaded. The corporation might sell its product, or portions of it, to an individual who could bill the goods all over the United States; there would be no constitutional method of preventing it. From these reasons it would seem that, at any rate until other methods had been

tried, it would not be advisable to adopt this plan, as great confusion of legislation would result."

THE ENLARGEMENT OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE: THE EXCLUSION OF TRUSTS FROM INTERSTATE COMMERCE

Congress may legally assume a larger—perhaps exclusive—control of corporations engaged in interstate commerce. In this direction, several specific measures have been proposed within the last two years. "Many have thought," says the Industrial Commission, "that injurious monopoly on the part of our industrial combinations might be destroyed through the destruction of the business itself, by forbidding to such combinations the use of the mails. Such a provision would practically destroy the business of any great corporation, and would, therefore, result indirectly in destroying the monopoly." Attorney-General Knox, also, recommended that a penalty be imposed upon the interstate transportation of goods made by monopolies, and that power be given to the Federal courts to restrain such transportation at the Government's suit. The anti-trust measures, proposed in 1903 by Congressman Littlefield and Senator Hoar, forbade to over-capital-

ised corporations and to companies which in any way restrained competition the use of the facilities of interstate commerce. Whether such exclusion from interstate commerce be legal has been questioned: the fact that Congress can constitutionally exclude lottery tickets from the mails has convinced Professor Huffcut that a similar anti-trust statute would be constitutional; the advisory counsel of the Industrial Commission, however, has doubted the analogy between lottery tickets, which intrinsically are obnoxious, and wholesome commodities of trade whose only fault is that they originated with the trust. That Congress could impress upon a necessity of life so permanent a condemnation that an individual might be forbidden to export it from one State to another seemed to him incredible. Were the legality of such a law settled, there would still be left the eternal questions—what is over-capitalisation, when is monopoly proved, and where is interstate commerce?

THE TAXATION OF TRUSTS UPON THEIR INTERSTATE BUSINESS

Another suggestion in the direction of larger control by Congress has been to tax corporations

upon their interstate business. "Congress may," suggested the Industrial Commission, "besides levying a tax upon them, lay other conditions without the fulfilment of which State corporations would be forbidden to engage in interstate commerce. It may prescribe conditions which would in all probability prevent many, if not most, of the abuses which come from our great combinations, so far as they are engaged in interstate business. If it appears that the danger of monopolistic control increases with the size of corporations and the extent of their businesses, a franchise tax might readily be made progressive in its rates, and thus give back to the public, through this partial bearing of the burdens of government, some of the gains of monopoly." Accordingly, the Commission recommended "that an annual franchise tax be imposed upon all State corporations engaged in interstate commerce, calculated upon the gross earnings of each corporation from its interstate business; that the minimum rate of such tax be low, but that the rate be gradually increased with increases in earnings." As explained by Professor Jenks, the expert of the Commission, the Commission hoped by this means to gain information rather than revenue: "the investigation of the business of

each corporation would be of necessity so thorough that the Government would readily obtain all the knowledge necessary for holding the corporation rigidly to legal action and for prescribing what seemed to be wise measures for future control." The constitutionality of such a regulation is certain: its expediency, however, has been doubted. So far as getting information was an object, the end has already been attained by the Nelson Amendment creating a Bureau of Corporations in the Department of Commerce. The tax, as Mr. Stimson pointed out, could be evaded: "corporations which do both an interstate and a State business would put their unprofitable transactions into the interstate business through the device of selling through an agent, and their really fat contracts they could keep within State lines." Finally, the eternal question recurs—what is interstate commerce?

PERMISSIVE FEDERAL INCORPORATION LAWS FOR COMPANIES ENGAGED IN INTERSTATE COMMERCE

In still another way, it has been suggested that Congress assume control of interstate trading corporations. As this plan applies squarely to the difficulty of defining interstate commerce, it

has the merit of novelty. Original with Mr. James B. Dill, a corporation lawyer of New York, and endorsed by the Industrial Commission, this plan aims to organise, under Federal incorporation laws, companies engaged in interstate commerce. To attempt in such an act a definition of interstate commerce, or to raise the question by enforcing the act upon all corporations engaged in interstate commerce, the Industrial Commission found, would be fatal. But to pass a statute incorporating "any State corporation engaged in interstate commerce or any number of citizens of the United States desirous of forming a corporation for the purpose of engaging in interstate commerce" would avoid both difficulties. The statute would be permissive, not mandatory: and to induce interstate trading corporations to declare themselves such, and to come under the control of Congress, Mr. Dill and Mr. Stimson have suggested persuasive allurements. These corporations, like the national banks, would be allowed to sue or be impleaded in either Federal or State courts; they would not be subject to taxation by a State except for property within the State; they would report annually to Federal officers the situs of their property, and, paying taxes according to this report, would be saved double taxa-

tion, would be free from State attack, and be allowed the exclusive use of the word "national." Under the present confused tax systems of the various States, not only are the variations troublesome, but the blackmail and "strike-bills" to which corporations are subject are very expensive. Even though the Federal tax were heavier than the present, the promise of a uniform, honest levy would induce companies to incorporate under Federal law. Speaking from wide experience, Mr. Dill—corporation counsel, as he described himself, "of organisations whose aggregate capital would run from $500,000,000 to $1,000,000,000"—together with the vice-president of the Standard Oil Company and the chairman of the American Steel and Wire Company urged this plan upon the Industrial Commission. Once brought within Federal jurisdiction, as Mr. Dill pointed out, the law could enforce reports to the stockholders and subject the corporation to national supervision. Such a statute is generally conceded to be constitutional. "The system of exclusive Federal control," said Professor Huffcut, "would seem the logical outcome of the constitutional provision giving to Congress the power to regulate interstate commerce. I am even disposed to think that it will be the ultimate

solution of the present problem." Against this plan, it has been urged that the centralisation of business under Federal control would bring about the consequences already apprehended from constitutional amendment. Anxiety has also been expressed lest the great corporations influence a greater laxity in a Federal incorporation act that now prevails in State corporation laws. Professor Jenks, replying to these objections, has suggested that by following the precedent of the National Banking Act and providing that suits be brought in either Federal or State courts, centralisation in the Federal judiciary may be avoided. The legislation of Congress relating to national banks and to corporations in Porto Rico seems to promise a greater strictness, under Federal control, than prevails in any of the States.

THE PROHIBITION OF UNDERSELLING IN COMPETITIVE MARKETS

The present system of control by State and Federal governments may be continued with greater harmony of action and stricter control of the trusts. As the least radical of the three great lines of action proposed, this last, in one form or

another, has been most often urged. Certain forms of control suggested, however, have been quite as drastic as any that have been proposed in the other two lines of action. Foremost in the public mind has been the proposal that destructive competition be made criminal. The Industrial Commission recommended "that stringent laws be enacted by Congress and by the several State legislatures, making both penal and criminal the vicious practice of discriminating between customers and cutting rates or prices in one locality below those which prevail generally, for the purpose of destroying local competition." The Attorney-General urged Congress to direct legislation against "discrimination in prices as against competitors in particular localities, resorted to for the purpose of destroying competition in interstate and foreign trade." The measures advocated in 1903 by Senator Hoar and Congressman Littlefield forbade the facilities of interstate commerce to corporations which attempt to establish monopoly by lowering prices where competition is threatened, or in any manner whatever prevent competition. Professor John B. Clark, of Columbia University, has traced the evils of trusts to the practices of giving rebates to dealers who handle only trust-made

goods, of cutting prices below cost in the territory of rivals while selling at full price elsewhere, and of cutting prices below cost on the one grade or style which the competitor makes: statutes against these practices, he suggests, would cure the ills of practical monopoly. A specific illustration of such a statute is Section 4 of the Anti-Trust Bill proposed in 1903 by Senator Hoar. "Every person, corporation, joint-stock company, or other association engaged in commerce with foreign nations or among the several States, who shall enter into any contract, combination, or conspiracy, or who shall give any direction or authority to do any act for the purpose of driving out of business any person engaged therein, or who for such purpose shall in the course of such commerce sell any article or product at less than its fair market value or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions, or who shall sell any article upon a condition, contract, or undertaking that it shall not be sold again by the purchaser, or restrain such sale by the purchaser, shall be deemed guilty of misdemeanour, and on conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding one year, or both said punishments, in

the discretion of the court." To such a regulation grave objections have been urged. The sale of goods "upon a condition, contract, or undertaking that they shall not be sold again" is in some businesses considered unavoidable. The sale of goods "at less than fair market value or at a less price than it is accustomed to receive therefor in any other place under like conditions," as has appeared in an earlier chapter, is among the most common practices of business. "A small flouring mill in southern New York," said an expert of the Industrial Commission, "sells flour in its own town, in Oswego and Elmira, N. Y., in Wilkesbarre and Scranton, Pa., and in Phillipsburg and Dover, N. J. It is engaged in interstate commerce. It must sell in the face of the competition of the great Minneapolis mills and of the so-called flour trust. Freight-rates from Minneapolis are substantially the same to all these points; in them all, flour of the same brand sells at practically the same price. The local New York miller must meet these prices, freights included. In consequence, as his freights differ, he sells to each town at a different rate. His profits from each differ. He does not sell to all at the same rate and then add the freight as does

his great rival. If the law of no discrimination is enforced on him in the same way as on the trust —and the law can be no respecter of persons,— he is confined to his local New York market, cannot sell enough to keep his mill running, and stops. The act indicated, rigidly enforced, would close hundreds of small mills in all sections of the country, and would stop thousands of men in other lines." Along the same line of attack the constitutionality of such a statute has been assailed. The right to acquire property—and with it the right of business competition—is guaranteed by the Constitution. By the custom of business and, as appeared from the language of the judge in an earlier chapter, by the sanction of the courts, business competition includes not only "driving out of business any other person engaged therein," but also the practices named by the statute. Since both intent and means penalised by the statute appear among the privileges guaranteed by the Constitution, the validity of the statute seems open to question: and after settling these questions of expediency and validity, the obstacle of all compulsory regulation of interstate commerce remains: what is interstate commerce?

THE EFFECT UPON TRUSTS OF REDUCING THE TARIFF: EXPORT PRICES LOWER THAN DOMESTIC PRICES

The coincidence of combinations in several highly protected industries has added great force to the plan of curing the trusts by reforming the tariff. The oft-quoted remark of Mr. Havemeyer that the tariff is the mother of all trusts was plausible, upon the further testimony of Mr. Havemeyer that he would not have risked putting his refineries into the trust had there not been a high protective tariff on sugar. By giving home producers a monopoly of the home market, the tariff allows such producers monopoly profits. Monopoly profits, however, belong to the entire protective industry: the proportion enjoyed by the protected trust is in no wise increased over that of its protected competitor. So far as it prevents the importation of goods, the Industrial Commission found, the tariff helps the trust together with its competitors. The experience of England shows that combination is at work even under free trade. Industries like the tinplate manufacture, which can exist only by the tariff, or like the steel manufacture, which are excessively protected by the tariff, naturally owe

their profits, in whole or in part, to protective duties. All of the profit of the American Tin Plate Company, five-sevenths of the profit of the American Steel and Wire Company, and one-half the profit of the United States Steel Corporation is attributed to the tariff. Accordingly, the suggestion was made to the Industrial Commission that the President be empowered to reduce by proclamation the duties in industries controlled by the trusts. The fact was overlooked that in each of these industries the competitors of the trusts owe the same proportion of profits to the protective tariff. "To remove the tariff as a punitive measure directed against trusts," said President Roosevelt in his message of 1902, "would inevitably result in ruin to the weaker competitors who are struggling against them." The striking use, however, which certain trusts have made of their tariff advantage has aroused hostile comment. The United States Steel Corporation, by the admission of its president, exported steel for $23 per ton, while for the same goods it charged home consumers $28 per ton. The American Tobacco Company has fixed the export price of certain cigarettes lower than the domestic price. In defence of this practice, Mr. Schwab has said

that the surplus cannot be disposed of at the home price and that a price must be made to sell the goods: if the plants were not kept running at full capacity, he argued, the cost of production would be increased until the domestic price would be greater than at present. Whatever be the validity of this reasoning, before the Industrial Commission the practice was most enthusiastically defended by independent manufacturers. The president of the Sloss-Sheffield Iron and Steel Company considered it justifiable to sell abroad at lower prices, as an alternative to shutting down American mills. The vice-president of Jones & Laughlin Limited testified to the general practice among manufacturers of exporting at prices lower than home prices: in the case of his own company, this difference was generally one or two dollars. Even in the home market, it was shown, such a practice is common. Eagerness to extend his market induces the Chicago manufacturer to fix prices for Omaha customers relatively lower than for Peoria customers; and for Denver dealers lower than for Omaha; and for San Francisco dealers lower than for Denver. The International Paper Company—a notable exception to the rule—has been able to export at prices largely in excess of

domestic prices. Reduction of export prices, if indeed it be an evil, and excessive profits in protected industries are common to trusts and to independent concerns. They are both due to the protective tariff, and abound in equal persistence among the trusts and among their competitors. "The question of regulation of the trusts," again to quote President Roosevelt, "stands apart from the question of tariff revision." The Standard Oil Company, with no tariff protection whatever, is stronger than any trust in the protected steel and tin-plate industries. Evils common to an entire protected industry can be cured by tariff revision: if very deep-rooted—as in some instances appears likely—they can best be cured by removing the duty and destroying the industry. As a specific remedy for the evils in trusts, however, tariff revision does not seem practicable.

THE ENFORCEMENT OF PUBLICITY

Less drastic, and in the direction already taken by creating a Bureau of Corporations in the Department of Commerce, is the enforcement of publicity. The Nelson Amendment of 1903 substantially followed the recommendations of the Industrial Commission and of the Attorney-Gen-

eral. The Littlefield Bill, which passed the House but failed to pass the Senate, provided for more detailed and searching public examination of interstate trading companies. Such examination, the Industrial Commission found, was not unpopular among the better established trusts. The president of the Federal Steel Company declared it desirable that all classes of people should have the fullest possible knowledge of the actual facts concerning great industrial combinations. "With plenty of investigation and plenty of discussion," he remarked concerning illegitimate trusts, "they will not succeed in the long run." "I will state broadly," said Mr. Havemeyer, of the American Sugar Refining Company, "that where a corporation is dealing particularly in things that are essential to the benefit of mankind—clothing, fuel, oil, sugar, rice, food—anything which is peculiarly, as I have described it, of a quasi-public character, it would be beneficial to the public to have them all under governmental superintendence." The desire to be distinguished from the speculative industrials—the same consideration that urges Federal incorporation—lies at the bottom of this sentiment. The publicity necessary to acquaint investors and the public with the facts of profits and properties

need not, as accountants agree, disclose to competitors the secrets of the business: the supervision of national banks and of insurance companies bears witness. Whether, indeed, the public that buys speculative securities will be dissuaded by the publication of the facts, is a question which has been cynically raised by investors' journals. The operator in the market and the foolish investor unacquainted with business seem undeterred by balance-sheets: the success of mining promoters who report monthly to their victims the receipts, disbursements, and prospects of their properties proves this. Upon the greater number of investors, however, who belong to neither of these classes, information would not seem wasted. To what degree the management of the trusts should be supervised has been questioned. Congressman Littlefield has proposed to prohibit over-capitalisation. Economists alive to the reckless neglect of surplus reserve in trust accounting have urged the requirement that, until a certain percentage of reserve has been accumulated, not more than one-third the profits should be paid the stockholders. Since capitalisation is based upon earning capacity, this might better be determined by business men than by Congress. Since the distribution of profits, except in quasi-public

enterprises, is particularly an individual concern, varying with every industry and every business, the interference of the Government might be resented as paternal. The needful degree of supervision, however, together with the chance of evasion by clever bookkeeping, of blackmail by the Government inspectors, and of escape altogether under the ambiguity of "interstate commerce," can best be determined after the Bureau of Corporations has been longer in operation.

THE MORE EFFECTUAL PREVENTION OF RAILROAD DISCRIMINATION: RAILROAD POOLS

Another suggestion, closely following the Elkins Act of 1903, is to strengthen the Interstate Commerce Act with a view to more effectual prevention of discriminations. As an effort to correct the one evil of practical monopoly that has not proved self-corrective, this plan deserves special attention. The Cullom Bill, considered by Congress in 1900 and in the report of the Industrial Commission in 1902, called for a more stringent publication of rates, an increase of penalties for departure from published rates, and greater powers in the Interstate Commerce Commission for enforcing the act. By the testimony of railway

managers and scientific experts, the prevention of discriminations could be hastened by allowing the roads to form pools, and thus avoid the disastrous competition in freight rates that results in individual discrimination. Under railway pools in the United States, the Industrial Commission found, freight rates had not been maintained at excessive figures, but had actually been reduced. In the leading European countries, pooling has been recognised as a necessary remedy for ruinous rate-cutting and discrimination: Government roads enter into pools freely with private lines. "The advocates of pooling," the Commission reported, "include nearly all the railway officers who appeared before the Commission. A number of shippers, representatives of commercial bodies, members of the Interstate Commerce Commission, and other expert students of transportation favour pooling, with the proviso that more effective governmental control than at present be exercised over rates and pooling contracts." Legislation in the direction of preventing discriminations has already commenced in Congress. The specific recommendations of the Industrial Commission and of the Attorney-General are the basis of legislation now prominently proposed. With public attention focussed on

discriminations, the prospect of eliminating the one evil of monopoly grows increasingly bright. So confident is Attorney-General Knox of this remedy, that he advises relaxing the prohibitions of the Sherman Anti-Trust Act. The act in effect prohibits all combinations in restraint of interstate commerce, whether reasonable or unreasonable. With the caution of a sound lawyer —and in this he is followed by most thoughtful students—Mr. Knox advises the toleration of partial or even complete restraints of trade wherever reasonable. "If the law will guarantee to the smaller producer protection against piratical methods," he says, "and keep the highways of the market open and available to him for the same tolls charged to his powerful competitor, he will manage to live and thrive to an astonishing degree."

THE IMPROVEMENT OF STATE CORPORATION LAWS

The remedies so far discussed—assuming the continuance of the present control by State and Federal governments—have suggested action by the Federal Government. Excepting the requirement of publicity, none of these remedies, however, is applicable to the evils of present trust

organisation. Scandalous promotion, over-capitalisation, and unscrupulous management have all been due to lax corporation laws among the States. As the States have caused these ills, it has been proposed that they mend their corporation laws to cure them. The Business Companies' Act, drawn up under the direction of Professor Jenks and Mr. Dill and recommended in 1900 to the New York Legislature by Governor Roosevelt, has been suggested as a model of reform. The aim of the proposed act was to give larger privileges, valuable to an honest corporation, balanced with rigid requirements as to publicity of accounts and responsibility of directors. The privileges included the right to contract, to acquire, and to sell any kind of property, including its own stock and that of other corporations: in the issue of stock for property or for services, the value might be determined in the judgment of the directors. The restrictions, however, were commensurate. A public office must be constantly open, containing for the inspection of stockholders books showing all the members, their holdings and their transfers; an incorporation certificate must be furnished to anyone for one dollar, showing the powers of the directors; a four-fifths vote of the stockholders was necessary

to change the business, or to issue new stock, and the company must purchase at an appraised value the stock of dissenting members wishing to withdraw; new by-laws were made invalid unless mailed to each stockholder; for inspection at the annual meeting a corrected list of members and of their holdings must be mailed to members requesting it; to protect the stockholders against the directors, bonded auditors must be chosen at the annual meeting by a ballot; any stockholder, on paying ten cents per hundred words, could demand a statement of all salaries, contracts, and agreements; every increase of salary must be ratified at the annual meeting; directors signing false statements were liable jointly and severally for the debts of the company; if the annual meeting were not held at the proper time, salaries ceased until it was held, and the payment of such deduction later was made unlawful; at the annual meeting any stockholder could demand the record of the directors' meetings; every share of stock was collectible at par in cash, unless a contract on file for public inspection in the office disclosed its consideration—cash, property, or services; every share not issued for cash must have stamped on its face a notice of the contract and of the total amount so issued; the annual

report must show the stock issued in the previous two years, and whether it were for cash; officials who did not file sworn reports were ineligible to office for one year; every prospectus or advertisement for selling shares or bonds must give a list of detailed information, comprising no business secrets, but including bonuses and promoters' fees, and all else an investor might ask; promoters not complying with the law were liable for damages to the aggrieved party; before the annual meeting a balance-sheet must be mailed to each stockholder giving full details of stock issued, debts, assets, earnings, depreciation, and bad acounts; finally, auditors were made liable to the injured party in case of neglect or false certifying. Such publicity, it has been considered, makes inspection by State officials unnecessary, and removes from sound concerns the risk of blackmail. In the case of a trust with many stockholders, business methods would be known to the general public. In the case of smaller and less-feared companies, however, the business could be kept as secret as at present.

The proposed Business Companies' Act stands firmly on the modern theory that, in the absence of fraud in organisation and management, a business corporation should be allowed to do anything

that an individual may do. The old theory had been that corporations, as creatures of the State, should be guaranteed to the public in all particulars of responsibility and management. The aspects of corporate activity that best illustrate the significance of this change in theory are the organisation and the rights of stockholders. The old theory, long held in Massachusetts law, was that the capital stock should be a guarantee fund for the payment of creditors: and, consequently, should be paid up at par in cash and should not be exceeded by the corporate debt. How far from this notion the corporation laws of New Jersey, of Delaware, and of West Virginia have departed has already appeared. The proper measure of safety has been sought in the proposed Business Companies' Act and in the similar provisions of the Corporation Law adopted in 1903 by Massachusetts. In its scrutiny of promotion, the new theory, as appears from the proposed act and the Massachusetts act, is stricter than the old. A similar degree of vigilance has been recommended by the Industrial Commission: "The promoters and organisers of corporations or industrial combinations which look to the public to purchase or deal in their stocks or securities should be required to furnish full details regard-

ing the organisation, the property or services for which stocks and securities are to be issued, amount and kind of same, and all other material information necessary for safe and intelligent investment; any prospectus or announcement of any kind soliciting subscriptions which fails to make full disclosures as aforesaid or which is false should be deemed fraudulent, and the promoters with their associates held legally responsible; the nature of the business of the corporation or industrial combination, all powers granted to directors and officers thereof, and all limitations upon them or upon the rights or powers of the members should be required to be expressed in the certificate of incorporation, which instrument should be open to inspection by any investor." In its enlargement of the rights of the stockholders, allowing access to the details of management, the new theory, as appears from the proposed act and from the Massachusetts Act, permits of greater protection than the old. "Under a system of this sort," to quote the report of the Massachusetts Committee on Corporation Laws, "the State machinery will provide that the stockholders and the creditors may at all times have access to the corporation records or returns in such manner as clearly to show, both at organisation and there-

after, all of the property or assets." To the same purpose, the Industrial Commission advised that "the directors or trustees should be required to report to the members the financial condition in reasonable detail, verified by a competent auditor at least once a year; to inform members regarding the method and conduct of business by granting them under proper restrictions access to records of directors' meetings or otherwise; to provide for the use of members before the annual meetings lists of members with their addresses and their several holdings; and to provide, in whatever other ways may be named in the certificate of incorporation, means whereby the members may prevent the misuse of their property by directors or trustees." The provisions of the proposed New York Business Companies' Act, based upon the modern theory of corporations and protecting the investor in the promotion and management of the company, have not only the endorsement of eminent corporation counsel and economists in this country, but also the authority of substantial enactment in England, in France, and in Germany.

THE CHOICE AMONG THE PROPOSED REMEDIES

The order in which these statutory remedies might be applied to the evils of trusts was considered by the Industrial Commission. Having urged upon Congress the amendment of the Interstate Commerce Act and the plan of Federal taxation and supervision, the Commission concluded: "If experience shall prove that these remedies are not sufficient to properly control the great corporations and combinations, it may be wise for Congress to enact a Federal corporation law. Should such a law be enacted, it would then be possible to increase the franchise tax upon State corporations engaged in interstate commerce so as to compel them to organise under the Federal law. When organised under a Federal law it would be possible, as has been pointed out, to apply to corporations any degree of publicity or restriction that might be authorised. In the meantime the separate States should amend their corporation laws so as to require greater publicity."

Three lines of statutory regulations of trusts have been suggested. First, the Federal Government by act of Congress could give the States

larger—perhaps exclusive—control of corporations engaged in interstate commerce. Diversity of legislation among the States, however, would probably lead to hopeless confusion. Second, the Federal Government could assume a larger—perhaps exclusive—control of interstate trading corporations. By excluding trust-made goods from interstate commerce—upon the large assumptions that the trusts are demonstrably engaged in interstate commerce, and that such exclusion is constitutional,—combination might be destroyed. By taxing the State corporations on their interstate commerce—assuming that the trusts are demonstrably engaged in interstate commerce,—the trusts might be mulcted for their profits. By passing a permissive Federal incorporation act, a separation of the good trusts from the bad might be effected. Third, the present control by Federal and State governments could be continued with a view to greater harmony and stricter regulation. By forbidding predatory and destructive methods of competition—upon the large assumptions that the trusts are demonstrably engaged in interstate commerce and that such a statute is constitutional,—the power of the trusts might be limited. By reducing the protective duties in industries controlled by combinations,

the trusts, together with their competitors, might be disabled. On the other hand, by enforcing publicity in interstate trading corporations—assuming that the trusts are demonstrably engaged in interstate commerce,—the whole evil arising from the form of modern trust organisation might be corrected. By strengthening the Interstate Commerce Act to prevent freight discrimination, the whole evil of practical monopoly might be corrected. These two last remedies, be it noted, carry in themselves the cure of most trust ills. In harmony with stricter State corporation laws, enacted along the lines laid down by the proposed New York Companies' Act and the recommendations of the Industrial Commission, these remedies might relieve the trust situation.

A POSSIBLE REMEDY IN THE LAW OF PUBLIC-SERVICE COMPANIES

In the zeal for statutory solution, the significant bearing of recent common law upon industrial combinations must not be overlooked. From earliest times the State has been allowed to use its police power in the regulation of quasi-public businesses. Innkeepers have thus been con-

trolled by act of the Legislature, and the charges of common carriers and wharfingers have everywhere been fixed by statute. Even where no statutory regulation has been enacted, the common-law rule has come to be that persons professing such businesses have assumed toward the public certain duties—they must not retire from their public calling without due notice, they must serve all who ask to be served, with facilities adequate to reasonable demands, without discrimination in cost or quality of service, and at a reasonable price. These principles, already familiar in their application to railroads, were given a wider extension in 1876 by the Supreme Court of the United States, and were applied to the grain-elevator business.* "Property becomes clothed with a public interest," said the Court, "when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created." Upon this principle, a statute fixing the charges for elevator storage was held valid.

* Munn *vs.* Illinois, 94 U. S., 113.

Subsequent decisions of the court have more fully defined the extent of the principle. Businesses of a public nature, enjoying substantial monopoly and upon which the civilised community has come to depend, may be declared by the Legislature public callings: and the determination of reasonable charges by statute is not a violation of a constitutional privilege. Within the last generation, accordingly, the charges of ferries, grist-mills, gas and electric lighting plants, telegraphs, stockyards, street railways, and telephones have been fixed by various Legislatures. The recognition of these businesses as public callings has stimulated the courts to further activity. Even in the absence of statute upon the subject, the courts have come to treat these businesses as public callings; and, where no charges have been fixed by the Legislature, have nevertheless required that all charges be reasonable. If the law of public service continues to assimilate quasi-public businesses with public callings, its importance in the regulation of trusts must soon be felt. Already the common law for public-service companies, to some minds, has assumed shape like this: Whenever a business, upon which the community has come to depend for its welfare, becomes substantially and permanently controlled

by an individual or combination, such a business becomes a public calling: the common-law duties of a public calling are extended to those controlling the business; and they must serve all, with adequate facilities, without discrimination, and at a reasonable price. At present, it should be noted, the rule has been applied by the courts only to quasi-public monoplies and to closely allied businesses.* Should the rule grow to the scope suggested, it would put the regulation of trusts, with the questions of price and of varying prices in different localities, immediately into the hands of the courts.

THE HOPEFUL OUTLOOK FOR TRUST REGULATION

How soon the solution of the problem will be reached would be venturesome to guess. The Attorney-General has reported that the situation is much improved: "The amount of capital," he says, "embarked in independent enterprises within the last two years at least equals the total capital of the great combinations formed within the last twelve years." Since the report of the Industrial Commission in 1902, the quantities in the

* The reported cases on this most interesting subject are collected in Beale and Wyman: *Public Service Companies.*

equation have been greatly simplified. Trust evils, it has appeared, arise from the fact of practical monopoly and from the form of trust organisation. The evil of practical monopoly that has not proved self-corrective is discrimination in freight rates. Over-capitalisation, with its attendant injury to the investor through neglect of surplus reserve, creation of excessive floating debt, and distribution of unearned dividends, has been the evil of modern trust organisation. While public attention and the course of the common law continues bent upon specific measures for reform of these evils, perfection in industrial efficiency will not overshadow the interests of the consumer, of the competitor, and of the State. When the ills of trusts have been remedied, combinations which have assembled sufficient economies to compose an advantage over the competing concerns which they supplant will be as harmless politically as they are efficient industrially.

THE END

INDEX

Addyston Pipe Pool, operation of, 9; declared illegal, 142. [*Sources:* Addyston Pipe Company *vs.* U. S., 175 U. S., 211]

Addyston Pipe and Steel Co., quoted, 142

Advertising, concentration of, by International Silver Company, 49; by American Chicle Company, 49; by National Biscuit Company, 49; by American Tin Plate Company, 49; by American Steel and Wire Company, 49, 50

Amalgamated Association of Iron and Steel Workers, relations with United States Steel Corporation, 56; with National Steel Company, 57; with American Steel Hoop Company, 57; with American Tin Plate Company, 57; with Federal Steel Company, 57. [*Sources:* Wilgus, United States Steel Corporation, 64; xiii Ind. Com., 503]

Amalgamated Copper Company, stock quotations of, 114

American Car and Foundry Company, strategic location of mills, 65. [*Sources:* Poor's Manual of Railroads, Misc. Corp.]

American Chicle Company, concentrates advertising, 49; capitalisation of, 109. [*Sources:* xiii Ind. Com., 36, 50]

American Glucose Company of New Jersey, attacked in Illinois, 135

American Grocers' Association, president of, favours factor system, 47. [*Sources:* i Ind. Com., 55]

American Ice Company, decline in securities of, 114; passing of dividend by, 122; floating debt of, 124

American Malting Company, decline in securities of, 114; floating debt of, 114. [*Sources:* Com. and Fin. Chron., Mch. 10, 1900; xiii Ind. Com., 932]

American Potteries Company, promotion of, 103

American Sheet Steel Company, organised, 40
American Smelting and Refining Company, breaks the strike, 1899, 55. [*Sources:* xiii Ind. Com., 98]
American Spirits Manufacturing Company, absorbs the Distilling and Cattle Feeding Company, 17; organises the Spirits Distributing Company, 17. [*Sources:* i Ind. Com., 235, 831]
American Steel and Wire Company, threatened by Carnegie Steel Company, 36; reduces bad debts, 43; better dealings with jobbers, 43; reduces salesmen, 48; concentrates advertising, 48, 49; effects saving in salaries, 60; savings in cross-freights, 65; controls output, 71; maintains prices, 74; raises wages, 80; over-capitalisation of, 111; favours Federal corporation laws, 173; protected by tariff, 180. [*Sources:* i Ind. Com., 1005–1039; xiii Ind. Com., 560; Wilgus, United States Steel Corporation, 22, 25, 116]
American Steel Hoop Company, allied with National Steel Company, 36; observes union scale, 57; saves by distributing product, 63; buying supplies, 82; promotion of, 104, 105; payment for promotion of, 107; over-capitalisation of, 111. [*Sources:* Wilgus, United States Steel Corporation, 116; i Ind. Com., 953–957]
American Sugar Refining Company, see Sugar Refining business
American Thread Company, adapts its stock to needs of buyers, 50; advantage of, in buying supplies, 58. [*Sources:* xiii Ind. Com., 343–363]
American Tin Plate Company, allied with National Steel Company, 36; motives in formation of, 40; concentrates advertising, 50; observes union scale, 57; strategic location of mills, 65; controls output, 71; controls prices, 74; raises wages, 80; buying supplies, 82; promotion of, 103; payment for promotion of, 107; over-capitalisation of, 111; protected by tariff, 179, 180. [*Sources:* i Ind. Com., 849–942; xiii Ind. Com., 558, 592; Wilgus, United States Steel Corporation, 116]
American Tobacco Company and Continental Tobacco Company, factor system of, 45, 46; improves superintendence, 62; strategic location of mills, 65; promotion of, 105; export prices of, 180. [*Sources:* xiii Ind. Com., 305–342]
American Woollen Company, stock prices of, 114

Anderson vs. *United States*, quoted, 141

Anti-Trust Legislation, directed against trust agreements, 14, 15; among the States, 1887–1893, 130; neutralised by lax corporation laws, 132; Sherman Anti-Trust Act, 133; extends common-law definitions, 134; of Illinois, 135; of Missouri, 136; of New York, 136; of Texas, 137; of Illinois and Texas declared unconstitutional, 138; of Georgia, Indiana, Louisiana, Michigan and Tennessee, unconstitutional, 138. [*Sources:* ii Ind. Com.; Beach, Monopolies; Eddy, Combinations; Cooke, Trade and Labour Combinations]

Arbuckle Brothers, competition of, with American Sugar Refining Co., 84

Bad Debts, reduced by American Steel and Wire Company, 43; reduced by United States Rubber Company, 44

Banks, the Rockefeller "chain" of, 53; the Morgan "chain" of, 54

"*Beef Trust*," attacked by Att'y-Gen. Knox, 149, 150. [*Sources:* Rep. of Att'y-Gen.]

Bessemer Steel Pool, operation of, 9. [*Sources:* Iron Age, July 10, November 19, 1896]

Borrowing, the opportunities for, 52

Buying of Supplies, saving in, by American Sugar Refining Company, 58; by Standard Oil Company, 58; by American Thread Company, 58; by United States Steel Corporation, 58; by American Sugar Refining Company, 82; by American Tin Plate Company, 82; by American Steel Hoop Company, 82; by Standard Oil Company, 83; by United States Steel Corporation, 83

Business Companies' Act, proposed to New York Legislature, 1900, 188. [*Sources:* Jenks, The Trust Problem, Appendix D]

Callaway, President, on private car system, 89

Capital, concentration of, in large-scale production, 51

Capitalisation of trusts organised 1897–1900, four billion dollars, 23; causes of large capitalisation, 100, 101; excessive capitalisation in promotion, 103; excessive payments to underwriters, 105, 106; excessive payments to promoters, 107; proper basis of, 107, 108; over-capitalisation, 110; money invested, as a basis of, 112, 113; no effect on prices, 126; Littlefield Bill pro-

poses to forbid excessive, 184; provision for, in Business Companies' Act, 188

Carnegie Steel Company, threatens commercial war, 36; formidable power for competition, 37; improves superintendence, 60; purchase of United States Steel Corporation, 105. [*Sources:* Wilgus, United States Steel Corporation; xiii Ind. Com., 448–475]

"*Chains" of Banks*, the Rockefeller "chain," 53; the Morgan "chain," 54

Chase National Bank, in Morgan "chain," 54

Chicago Gas Trust Company, held to be invalid, 146

Clark, J. B., Professor, proposes to prohibit cutting prices in competitive markets, 175. [*Sources:* Clark, Control of Trusts]

Combination, the only escape from competition in wholesale business, 3; through trust agreements, 11; through "community of interests," 15; through "holding corporations," 18; retarded by depression following 1893, 22; stimulated 1898–1902, 22; evils of industrial, 30; savings of, 34; motives to, 34, 35, 38, 39; not adapted to all businesses, 90

Common law, on restraint of trade, 128; on monopoly, 128; evolution of definitions of, 143, 144; makes pools illegal, 145; makes "trust agreements" illegal, 145; on "holding corporations," 146; on purchasing corporations, 146; virtually the ground of decision in Northern Securities case, 159; of public service companies, 197; possible extension over trusts, 198. [*Sources:* Beach, Monopolies; Eddy, Combinations; Cooke, Trade and Labour Combinations]

Community of Interest, bond that continued the Standard Oil Combination after 1892, 15

Competition, restrained in retail business by custom and in wholesale business by agreement or combination, 3; burdensome concessions during, 4; in the spirits and petroleum business, 6; ruinous results of, 36; restriction of, 40; wastes of, 47; evils of practical monopoly checked by, 74

Connellsville Coke, value of, over-estimated by Mr. Schwab, 117, 118.

Connolly vs. *Union Sewer Pipe Co.*, quoted, 138

Continental Tobacco Company, plants of, scattered in six States,

65; buys out Liggett & Meyer, 105. [*Sources:* xiii Ind. Com., 317–330]

Corporation Laws, of New Jersey, Connecticut, Delaware, New York and West Virginia allow "holding corporations," 20, 21; relaxation of, 95; change in, 96; New Jersey laws, shown by charter of United States Steel Corporation, 97; of Delaware and West Virginia, 98; trust companies in the "charter-granting" States, 100; of Massachusetts, 108; of Porto Rico, 108; anti-trust legislation neutralised by, 132; proposed Federal, 172; model for, in Business Companies' Act, 188; of Massachusetts, 1903, 192. [*Sources:* Wilgus, United States Steel Corporation; Report on Massachusetts Corporation Law; Morawetz, Corporations; Taylor, Corporations; i Ind. Com., 1077–1138]

Corporation Trust Company of Delaware, business of, 100. [*Sources:* i Ind. Com., 1125-1127]

Corporation Trust Company of New Jersey, business of, 100. [*Sources:* i Ind. Com., 1089, 1094]

Cullom Bill, terms of, 185

Current Prices, deceptive, 5

Cutting Prices in Competitive Markets, by American Sugar Refining Company, 84; by National Salt Company, 84; by Standard Oil Company, 85; legality and policy of, 86; prohibition of, recommended by Industrial Commission, 175; by Att'y-Gen. Knox, 175; by Senator Hoar, 175; by Congressman Littlefield, 175; by Professor Clark, 175; criticised before Industrial Commission, 177. [*Sources:* x ii Ind. Com., 773–911]

Demand and Supply, the economical adaptation of, 50

Diamond Match Company, declared an illegal monopoly, 146

Dill, J. B., federal corporation laws, proposed by, 172; part in Business Companies' Act, 188. [*Sources:* i Ind. Com., 1077–1089]

Distillers' and Cattle Feeders' Trust, see Spirits business

Distilling Business, see Spirits business

Distilling and Cattle Feeding Company, see Spirits business

Distilling Company of America, see Spirits business

Dividends, policy of speculative industrials in, 121; American Ice

Company passes, 122; United States Rubber Company passes, 122; International Paper Company passes, 122, 123. [*Sources:* xiii Ind. Com., 913–947]

Drake vs. *Siebold*, quoted, 137

Eastman Kodak Company, factor system of, 44. [*Sources:* xiii Ind. Com., 183–192]

Elkins Law, 1903, terms of, 154

Equitable Trust Company, in Morgan "chain" of banks, 54

Evils of Practical Monopoly, control of output and prices, 71; counteracted by potential competition, 75, 76; discharge of salesmen, 79; in buying raw material, 82; cutting prices in competitive markets, 84; freight discriminations, 88; opportunity for independent management lessened, 97

Evils in Present Trust Organisation, lax corporation laws, 95; excessive capitalisation, 100; excessive payments to underwriters, 105; excessive payments to promoters, 107; over-capitalisation, 109; decline in industrial securities, 114; over-statements in prospectus, 117; neglect of surplus reserve, 119; increase of floating debt, 123; may be cured by inevitable dominance of sound business methods, 127

Factor System, of General Aristo Company, 44; of Eastman Kodak Company, 44; of Pittsburg Plate Glass Company, 45; of American Tobacco Company and Continental Tobacco Company, 45, 46; of Distilling and Cattle Feeding Company, 46; not opposed by wholesale trade, 47

Federal Anti-Trust Act of 1890, 133; disappointing results of, 138

Federal Steel Company, threatened by Carnegie Steel Company, 36; observes union scale, 57; economises in superintendence, 81; raises wages, 81; underwriting of, 106; over-capitalisation of, 111; publicity favoured by, 183. [*Sources:* i Ind. Com., 969–1003; Wilgus, United States Steel Corporation, 116]

First National Bank, in Morgan "chain," 54

Floating Debt, increase of, by American Malting Company, 123; by American Linseed Company, 123, 124; by American Ice Company, 124; by International Silver Company, 124; by Pressed Steel Car Company, 124; policy of "holding corporations" in, 124, 125; of United States Steel Corporation, 124;

of United States Rubber Company, 124. [*Sources:* xiii Ind. Com., 913–947]

Freight Charges, savings in, by American Steel and Wire Company, 64; by American Sugar Refining Company, 65; by Standard Oil Company, 65; by National Salt Company, 66; discriminations in, 88; discriminations in, exposed by Att'y-Gen. Knox, 149. [*Sources:* Rep. of Att'y-Gen.]

Gates, John W., president of American Steel and Wire Company, discusses dealings with jobbers, 43. [*Sources:* i Ind. Com., 1005–1033]

General Aristo Company, factor system of, 44. [*Sources:* xiii Ind. Com., 188–205]

Glucose Sugar Refining Company, improves superintendence, 61, 62; attacked in Illinois, 135. [*Sources:* xiii Ind. Com., 717]

Gompers, Samuel, does not fear trusts, 80

Hanover National Bank, in the Rockefeller "chain," 53

Harding vs. *American Glucose Company*, quoted, 136

Hoar, G. F., Senator, restraint of transportation of trust-made goods proposed by, 168; proposes to forbid cutting prices in competitive markets, 174

"*Holding Corporation*," advantages of, 18; expedited by changes in the corporation laws of New Jersey, Connecticut, Delaware, New York and West Virginia, 20, 21; American Sugar Refining Company, 21; Distilling Company of America, 24; Standard Oil Company of New Jersey, 26; United States Steel Corporation, 26; apparent legal safety of, 27; promotion of, 101; common law on, 146; Northern Securities Company, 150; declared illegal under Sherman Anti-Trust Act, 157

Houck vs. *Anheuser-Busch Brewing Association*, quoted, 137

Huffcut, E. W., Professor, on State control of interstate commerce, 166; on exclusion of trust-made goods from interstate commerce, 169; on Federal corporation laws, 173. [*Sources:* i Ind. Com., 1211–1219]

Illinois Steel Company, withdraws from Steel Rail Pool, 11. [*Sources:* Railway World, Feb. 13, 1897]

Incorporation in Charter-granting States, 98

Industrial Combination, the development of, 3; the evils of, 30

Industrial Commission, report of, 1902, 147; recommendations

of, 153; criticises proposed Constitutional amendment, 165; criticises control of interstate trading companies by the States, 167; recommends tax on interstate trading corporations, 170; endorses Federal corporation laws, 172; proposes to prohibit cutting prices in competitive markets, 174; recommends better corporation laws, 189, 193

Industrial Securities, the decline in, 28. [*Sources:* xiii Ind. Com., 913–945]

International Association of Machinists, obtain a nine-hour day, 56

International Paper Company, controls output, 71; steadies prices, 74; promotion of, 104; securities of, 114; exaggerated economies of, 117; passes dividend, 122; export prices of, 181. [*Sources:* xiii Ind. Com., 407–447]

International Silver Company, concentrates advertising, 49; reduces warehouses, 50; raises wages, 80; promotion of, 104; securities of, 114; floating debt of, 124. [*Sources:* i Ind. Com., 1049–1075]

Interstate Commerce, difficulty in defining, 142, 143, 163; proposed control of, by States, 166; increased control of, by Federal government, 168; proposed tax on corporations in, 169, 170; Federal corporation laws for companies engaged in, 172

Interstate Commerce Act, discriminations, before and after, 88; terms of, 133, 134; amended by Elkins Law, 1903, 154; proposal to strengthen, 185, Cullom Bill, 185; attitude toward pools, 185, 186

Investor, distrust of the, 125

Jenkins, Congressman, Chairman of House Judiciary Committee, recommends Constitutional amendment, 165

Jenks, J. W., Professor, Expert of Industrial Commission, discusses tax on interstate trading corporations, 170, 171; favors Federal corporation laws, 174; criticises prohibition of cutting prices in competitive markets, 177; part in Business Companies' Act, 188. [*Sources:* Jenks, The Trust Problem]

Jones & Laughlin, Limited, reserves of, 38; testimony of vice-president of, on exportations, 181. [*Sources:* xiii Ind. Com., 499, 598]

Kentucky Distilleries and Warehouse Company, formation of, 17; stock of, 25. [*Sources:* i Ind. Com., 818]

Knox, P. A., Attorney-General, on over-capitalisation, 125; on interpretation of Sherman Anti-Trust Act, 141, 142; activity of, 149; prosecutes railways, 149; prosecutes Northern Securities Company, 150; letter to Senate Committee, 151; recommendations of, 153; advises restraining transportation of trust-made goods, 169; advises prohibition of cutting prices in competitive markets, 174; advises amendment of Interstate Commerce Act, 185; advises relaxation of Sherman Anti-Trust Act, 185. [*Sources:* Rep. of Att'y-Gen.]

Kuhn, Loeb & Co., in chain of banks, 53

Labour, advantage of combination in dealing with, 55; smelters' strike, 1899, 55; strike of Amalgamated Association of Iron and Steel Workers, 55; the improved position in dealing with, 55; relations of, with National Wall Paper Company, 56; with Standard Oil Company, 57; with National Steel Company, 57; with American Steel Hoop Company, 57; with American Tin Plate Company, 57; with Federal Steel Company, 57; treatment of, by trusts, 78; does not fear trusts, 80; wages raised by Distillers' and Cattle Feeders' Trust, 80; by American Sugar Refining Company, 80; by Standard Oil Company, 80; by American Tin Plate Company, 80; by American Steel and Wire Company, 80; by International Silver Company, 80; by Federal Steel Company, 81; trusts have raised wages more than independent manufacturers, 81

Lackawanna Iron and Steel Company, withdraws from Steel Rail Pool, 11; independent of Connellsville coke fields, 117. [*Sources:* Railway World, Feb. 13, 1897]

Lake Superior Consolidated Mines, stock of, 112

Legislation, futility and laxity of State and Federal, 147

Liggett & Meyer, bought out by Continental Tobacco Company, 105

Littlefield, C. E., Congressman, proposes to prohibit cutting prices in competitive markets, 175; proposes publicity, 182; proposes to prohibit over-capitalisation, 184

Loans, influence of Rockefeller interests over, 53; influence of Morgan interests over, 54

Location of Mills, Strategic, by American Steel and Wire Company, 64; by American Sugar Refining Company, 65; by American Car and Foundry Company, 65; by Continental Tobacco Company, 65; by American Tin Plate Company, 65; by Republic Iron and Steel Company, 65; by Standard Oil Company, 65; by National Salt Company, 66

Mallory vs. *Hinaur Oil Works,* quoted, 145

Manhattan Trust Company, in Morgan "chain" of banks, 54

McNulta, General, testimony of, before Industrial Commission, 77

Midvale Steel Company, provides accumulation of reserve, 38

Mills, continuous operation of, 62; strategic location of, 64

Mogul Steamship Company vs. *McGregor,* quoted, 87

Monopoly, the evils of practical, 68; at common law, 128; possible inclusion within law of public service companies, 198

Moore, Judge William H., organises American Tin Plate Company, 40; organises National Biscuit Company, 40; organises American Sheet Steel Company, 40; payments to, for promotion, 107. [*Sources:* i Ind. Com., 959–968]

Morgan, J. Pierpont, steel interests of, 36; Morgan "chain" of banks, 54; underwriting syndicate of, in Federal Steel Company, 106; in United States Steel Corporation, 106. [*Sources:* Wilgus, United States Steel Corporation, 31]

Morton Trust Company, in Morgan "chain" of banks, 54

Munn vs. *Illinois,* quoted, 197

Mutual Life Insurance Company, in Morgan "chain," 54

National Bank of Commerce, in Morgan "chain," 54

National Biscuit Company, organised, 40; concentrates advertising, 49; promotion of, 104. [*Sources:* i Ind. Com., 959]

National City Bank, in the Rockefeller "chain," 53

National Cordage Company, fatal policy of high prices, 24. [*Sources:* xiii Ind. Com., 123–138]

National Harrow Co. vs. *Bement,* quoted, 136

National Lead Co. vs. *Grote Paint Store Co.,* quoted, 136

National Lead Company, attacked in Missouri, 136

National Plate Glass Jobbers' Association, regulation of prices by, 45

National Salt Company, controls prices, 41; reduces salesmen,

48; improves superintendence, 60; strategic location of mills, 66; steadies prices, 74; beset by competition, 75; cuts prices in competitive markets, 84; promotion of, 104. [*Sources:* xiii Ind. Com., 246–274]

National Shear Company, promotion of, 104; underwriting of, 106. [*Sources:* i Ind. Com., 1041–1047]

National Steel Company, threatened by Carnegie Steel Company, 36; observes union scale, 57; promotion of, 104; payment for promotion of, 107; over-capitalisation of, 111. [*Sources:* i Ind. Com., 943–951; Wilgus, United States Steel Corporation, 116]

National Tube Company, threatened by Carnegie Steel Company, 36. [*Sources:* Wilgus, United States Steel Corporation, 26]

National Wall Paper Company, relations with labour, 56. [*Sources:* xiii Ind. Com., 302]

Nelson Amendment, 1903, creates Bureau of Corporations and provides for publicity, 154, 182

New Jersey, "holding-corporation" laws created, 20

New Jersey Corporation Guarantee and Trust Company, business of, 100. [*Sources:* i Ind. Com., 1094–1096]

New Jersey Registration and Trust Company, business of, 100. [*Sources:* i Ind. Com., 1106]

New York Life Insurance Company, leading officials of, in "chain" of banks, 53

New York Trust Committee, 1897, recommends Constitutional amendment, 165

Northern Pacific Railroad, community of interest in, 16

Northern Securities Company, formed, 150; prosecuted by Att'y-Gen. Knox, 150; case of, 157; effect of, 159. [*Sources:* Rep. of Att'y-Gen.]

Opportunity, for talent and energy in trust régime, 91, 92

Output, Control of, by United States Steel Corporation, 71; by American Sugar Refining Company, 71; by United States Rubber Company, 71; by American Tin Plate Company, 71; by American Steel and Wire Company, 71; by Standard Oil Company, 71; by International Paper Company, 71

Over-capitalisation measured by the Stock Market, 110

People vs. *Chicago Gas Trust Company*, quoted, 146
People vs. *North River Sugar Refining Co.*, quoted, 146
Petroleum business, stimulated after the Civil War, 6; see Standard Oil Company
Pittsburg Plate Glass Company, factor system of, 45; raises prices, 73; promotion of, 103, 104; basis of capitalisation, 108. [*Sources:* xiii Ind. Com., 206–245]
Pools, in spirits and petroleum business, 6; purpose of, 8; operation of Addyston Pipe Pool, 9, Bessemer Steel Pool, 9; Wire Nail Association, 9; weakness of, 9; unenforceable and illegal, 10; instability of Steel Rail Pool, 11; Wire Nail Pool overcome by competition, 76, 77; illegal at common law, 145; expediency of railroad pools, 185
Porto Rican Corporation Act, restricts issue of stock, 108
Pressed Steel Car Company, reckless creation of floating debt, 124
Prices, under trusts more satisfactory than under pools, 14; reduction of, by Standard Oil Trust, 14; maintenance of, by Sugar Refineries Company, 14; extortionate prices of Distillers' and Cattle Feeders' Trust, 14; control of, sought by National Salt Company, 41; Distillers' and Cattle Feeders' Trust controls prices, 41; Standard Oil Company controls prices, 41, 72; controlled by American Sugar Refining Company, 71; raised by Pittsburg Plate Glass Company, 73; steadied by United States Steel Corporation, 73; maintained by Standard Oil Company, 73; by American Tin Plate Company, 73, 74; by American Steel and Wire Company, 74; steadied by International Paper Company, 74; by National Salt Company, 74; raised by National Cordage Company, 74; export prices of United States Steel Corporation, competition by destructive prices, 84; of American Tobacco Company, 180; of Sloss-Sheffield Iron and Steel Company, 181; of Jones & Laughlin, Limited, 181; of International Paper Company, 181. [*Sources:* i Ind. Com., 39–57; xiii Ind. Com., 725–911]
Production, the concentration of capital in large-scale, 51
Promoter, the task of the, 101
Promotion, by Judge Moore, 40; work of, 101; of American Tin Plate Company, 103; of American Potteries Company,

103; of Standard Oil Company of New Jersey, 103; of Pittsburg Plate Glass Company, 103; of American Sugar Refining Company, 104; of Distillers' and Cattle Feeders' Trust, 104; of Standard Distilling and Distributing Company, 104; of International Silver Company, 104; of National Shear Company, 104; of United States Rubber Company, 104; of National Salt Company, 104; of International Paper Company, 104; of National Biscuit Company, 104; of National Steel Company, 104; of American Steel Hoop Company, 104; of United States Steel Corporation, 105; of Continental Tobacco Company, 105; payments to Judge Moore for promotion, 107; payments for promotion of whisky trusts, 107; provisions for, in Business Companies' Act, 188

Prospectus, glossed statements in, regarding savings of combination, 34, 39, 117; provisions for, in Business Companies' Act, 188

Publicity, attained in Nelson Amendment (1903), 154, 182; sought in Littlefield Bill, 183; favoured by Federal Steel Company, 183; by American Sugar Refining Company, 183; in Business Companies' Act, 188

Publicity, the enforcement of, in interstate trading companies, 182

Public Service Companies, law of, 196; possible extension to trusts, 198

Railroads, condition of, assists the Standard "alliance," 7; special favours to trusts from railroads, 88

Railroad discrimination, 92; the more effectual prevention of, 185

Raw materials, the advantage in buying, 58

Remedies, statutory, for the evils of trusts, 194

Refining business, see Petroleum business

Republic Iron and Steel Company, strategic location of works, 65

Restraint of Trade, at common law, 128

Rockefeller, John D., forms the Standard "alliance," 7; Rockefeller "chain" of banks, 53

Roosevelt, Theodore, President, on tariff reduction, 180; recommends the Business Companies' Act, 188

Royal Baking Powder Company, reduces salesmen, 48. [*Sources:* xiii Ind. Com., 382–389]

Rubber Goods Manufacturing Company, stock prices of, 114

Salesmen, reduction in, by Distilling Company of America, 48; by United States Rubber Company, 48; by American Steel and Wire Company, 48; by National Salt Company, 48; by Royal Baking Powder Company, 48; reduction in, by trusts generally, 79. [*Sources:* xiii Ind. Com., 20–32]

Savings of Combination, glossed statements concerning, in prospectus, 34; prevention of commercial war, 36, 38; savings in the marketing of product, resulting from restricted competition, 40; effected by control of prices, 41; better terms in dealing with jobbers, 43; bad debts reduced, 43; factor system, 47; reduction of salesmen, 48; concentration of advertising, 48; adaptation of stocks to needs of buyers, 50; exaggerated in prospectus, 117

Savings of Large-scale Production, in borrowing from "chains" of banks, 53; in dealing with labour, 55; in buying of supplies, 58; in using the best processes, 59; in superintendence, 60; in continuous operation of works, 62; in distribution of orders, 63; in strategic location of mills, 64; in freight charges, 65

Second National Bank, in Rockefeller "chain" of banks, 53

Securities, four billion dollars' worth marketed by trusts, 23; exchange of, on the formation of the Distilling Company of America, 24; shrinkage since 1898, 29; value of, as a test of over-capitalisation, 110; of United States Steel Corporation, 112; disadvantage of high-priced securities, 113; prices of Amalgamated Copper, 114; of American Ice, 114; of American Malting, 114; of American Woollen, 114; of International Paper, 114; of International Silver, 114; of Rubber Goods Manufacturing, 114; of United States Steel, 114; of Union Bag and Paper, 114; decline in industrials, 114, 115, 126; rise in railway securities, 126. [*Sources:* xiii Ind. Com., 913–945]

Seep Purchasing Agency, fixes price of petroleum, 83

Sherman Anti-Trust Act, forbids pools, 10; application of, to American Sugar Refining Company, 21; terms of, 133; interpretation of, by courts, 139; construed in U. S. *vs.* Knight, 140; in U. S. *vs.* Trans-Mo. Freight Association, 140; in U. S. *vs.* Joint Traffic Association, 140; in U. S. *vs.* Hopkins, 141; in Anderson *vs.* U. S., 141; in Addyston Pipe and Steel

Company *vs.* U. S., 142; Att'y-Gen. Knox discusses, 142, 143; amended, 1903, 154; construed in Northern Securities case, 157; relaxation of, advised by Att'y-Gen. Knox, 187. [*Sources:* ii Ind. Com., Rep. of Att'y-Gen.]

Speculation, stimulates combination, 1897–1902, 22.

Spirits business, stimulated by internal revenue legislation, 6; combination in, 6; Distillers' and Cattle Feeders' Trust, 13; extortionate prices of, 14; reorganisation into Dist lling and Cattle Feeding Company, 17; declared illegal, 17; American Spirits Manufacturing Company, Spirits Distributing Company, Standard Distilling and Distributing Company and Kentucky Distilleries and Warehouse Company formed, 17; Distilling Company of America formed, 24; Distillers' and Cattle Feeders' Trust controls prices, 41; factor system of Distilling and Cattle Feeding Company, 46; wastes of competition in, 47; Distilling Company of America reduces number of salesmen, 48; adapts its stock to the needs of buyers, 51; raises the yield of whisky, 59; reorganisation of American Spirits Manufacturing Company because of competition, 75; competition against Distilling and Cattle Feeding Company, 77–79; raises wages, 80; promotion of Distillers' and Cattle Feeders' Trust, 104; promotion of Standard Distilling and Distributing Company, 104; underwriting of Standard Distilling and Distributing Company, 105; payments for promotion, 107; decline in securities of Distilling Company of America, 116; Distilling and Cattle Feeding Company declared illegal, 135. [*Sources:* i Ind. Com., 167–259]

Spirits Distributing Company, organised, 17

Spreckels, Claus, ruinous competition of, 77

Standard "Alliance," see Rockefeller, John D.

Standard Oil Company, Standard "Alliance" formed, 7; Standard "Alliance" becomes "evener" and controls 95 per cent. of the refining business, 1879, 8; "trust agreement" of, 1882, 11; economical management, 13; reduction of prices, 14; Standard Oil Trust declared illegal, 1892, 15; combination continued by "community of interest," 15; Standard Oil Company of New Jersey, made a holding corporation, 26; controls prices, 42; banking relations of, 53; friendly relations with labour, 57;

advantage of, in buying supplies, 58; reduces expenses of refining, 60; strategic location of works, 65; controls output, 71; fixes prices, 72; raises wages, 80; buying raw material, 83; cuts prices in competitive markets, 84; capitalisation of Standard Oil Company of New Jersey, 103; Standard Oil Trust declared illegal, 145, 146; favours Federal corporation laws, 173. [*Sources:* i Ind. Com., 261–799; xiii Ind. Com., 639–671]

State anti-trust laws, ill-success of, 134

State Corporation Laws, the improvement of, 187

State vs. *Firemen's Fund Insurance Co.*, quoted, 136

State vs. *Shippers' Compress and Warehouse Co.*, quoted, 138

State vs. *Standard Oil Co.*, quoted, 146

Steel Billets, deceptive current price of, 5

Steel Rails, fall in price of, after dissolution of pool, 11

Steel Rail Pool, dissolution of, 11. [*Sources:* Railway World, Feb. 13, 1897]

Stock Prices, table of, 114

Stocks, see Securities

Stimson, F. J. (advisory counsel of Industrial Commission), discusses difficulty of defining interstate commerce, 142; on State control of interstate commerce, 166; criticises exclusion of trust-made goods from interstate commerce, 169; criticises tax on interstate trading corporations, 170; favours Federal corporation laws, 172. [*Sources:* xix Ind. Com., 686–511]

Sugar Refineries Company, see Sugar Refining business

Sugar Refining business, Sugar Refineries Company formed, 1887, 13; maintenance of prices by, 14; Sugar Refineries Company declared illegal, 1890, 15; American Sugar Refining Company organised, 21; adapts its stock to the needs of buyers, 51; advantage of, in buying supplies, 58; saves by continuous operation of works, 62; saves cross-freights, 65; controls output, 71; controls prices, 71; competition with Spreckels, 77; raises wages, 81; cuts prices in competitive markets, 84; promotion of, 103; capitalization of, 109; American Sugar Refining Company attacked in courts, 140; Sugar Refineries Company declared illegal, 145; effect of tariff upon, 179; publicity favoured by, 182. [*Sources:* i Ind. Com., 41–166]

Superintendence, improved process and, 59; savings in, by American Steel and Wire Company, 60; by National Salt Company, 60; by Carnegie Company, 61; by United States Steel Corporation, 61; by Glucose Sugar Refining Company, 62; by American and Continental Tobacco Companies, 62; economies in, by Federal Steel Company, 81

Surplus reserve, neglected by the steel trusts, 38; maintained by the Carnegie Steel Company, Jones & Laughlin, Limited, and the Midvale Steel Company, 38; rule for the accumulation of, 119; neglect of, by industrial trusts, 121; neglect of, by United States Steel Corporation, 121; dividend payment prevents accumulation of, 122

Talent, effect of trusts on the development of, 90

Tariff, effect of, upon trusts, 179; upon American Tin Plate Company, 180; upon American Steel and Wire Company, 180; upon United States Steel Corporation, 180. [*Sources:* xiii Ind. Com., 513–638]

Taxation of Trusts, 169

Texas Brewing Co. vs. *Templeman*, quoted, 137

Texas and Pacific Coal Company vs. *Lawson*, quoted, 137

Travelling Men's Protective Association, deplores reduction in salesmen, 78. [*Sources:* xiii Ind. Com., 20–32]

Trenton Potteries Company, legality of, 147

Trust agreement, of Standard Oil Company, 12; loans its name to all industrial combinations, 12; of Distillers' and Cattle Feeders' Trust, 13; of Sugar Refineries Company, 13; advantages of, 13; attacked by hostile legislation, 14, 15; Sugar Refineries Company and Standard Oil Trust declared illegal, 15; illegal at common law, 143, 144

Trust-bargaining, dominance through, 82

Trust Company of America, in "chain" of banks, 53

Trust Problem, the, 32

Trust Regulation, Proposals for, limited by Constitution, 162; powers of State and of Federal governments, 163; Constitutional amendment, proposed by New York Trust Committee, 1897, 165; criticised by Industrial Commission, 165; control of interstate trading companies by the States, 166; criticised by Industrial Commission, 166; restraint on transportation of

trust-made goods, proposed by Att'y-Gen. Knox, 168; by Senator Hoar, 168; criticised before Industrial Commission, 169; tax on interstate trading corporations, 170; partly attained by Nelson Amendment, 171; criticised before Industrial Commission, 171; recommended by Industrial Commission, 172; Federal corporation laws, proposed by Mr. Dill, 172; by Industrial Commission, 172; by Standard Oil Company, 173; by American Steel and Wire Company, 173; by Professor Huffcut, 173; by Professor Jenks, 174; prohibition of cutting prices in competitive markets, recommended by Industrial Commission, 175; by Att'y-Gen. Knox, 175; by Senator Hoar, 175; by Congressman Littlefield, 175; by Professor Clark, 175; criticised before Industrial Commission, 177; reduction of tariff, 180; publicity proposed in Littlefield Bill, 183; favoured by Federal Steel Company, 183; by American Sugar Refining Company, 183; prohibition of over-capitalisation, proposed in Littlefield Bill, 184; strengthening the Interstate Commerce Act, proposed in Cullom Bill, 185; by Att'y Gen. Knox, 187; improved State corporation laws, 187; Business Companies' Act proposed by Professor Jenks, Mr. Dill, and Governor Roosevelt, 188; corporation laws recommended by Industrial Commission, 189, 193; possible regulation, by the law of public service companies, 198. [*Sources:* i Ind. Com., 1139–1219; xix Ind. Com., 649–722; Rep. of Att'y-Gen.; Clark, Control of Trusts; Wilgus, United States Steel Corporation, 68–105]

Trust Savings, the exaggeration of, 117

Underselling, the prohibition of, in competitive markets, 174

Underwriting Syndicate, work of, 102; in Standard Distilling and Distributing Company, 105; in National Shear Company, 106; in Federal Steel Company, 106; in United States Steel Corporation, 106; risks of, 106

Union Bag and Paper Company, stock prices of, 114

Union Trust Company, in Rockefeller "chain," 53

United States Flour Milling Company, decline in securities of, 116

United States Leather Company, over-capitalisation of, 110. [*Sources:* xiii Ind. Com., 931]

United States Rubber Company, reduces bad debts, 44; reduces salesmen, 48; carries less stock, 50; saves by continuous opera-

tion of works, 63; saves by specialisation of work, 64; controls output, 71; promotion of, 104; passes dividends, 122; floating debt of, 124. [*Sources:* xiii Ind. Com., 34–48]

United States Steel Corporation, organisation of, 26; motives in formation of, 36; deals with strike, 1901, 56; policy of, with organised labour, 56; advantage of, in getting raw material, 58; improves superintendence, 61; saves by distributing product, 64; controls output, 71; steadies prices, 73; competitors unharmed by, 75; buying raw material, 83; opportunity to compete with, 91; charter of, 97; promotion of, 105; underwriting of, 106; over-capitalisation of, 110; securities of, 112, 114; exaggerates value of coke-fields, 117; neglects surplus reserve, 121; floating debt of, 124; protected by tariff, 179, 180; export prices of, 180. [*Sources:* Wilgus, United States Steel Corporation, xiii Ind. Com., 448–487]

United States vs. *E. C. Knight Co.*, quoted, 21, 140

United States vs. *Hopkins*, quoted, 141

United States vs. *Trans-Missouri Freight Association*, quoted, 141

United States Trust Company, identified with Rockefeller "chain" of banks, 53

Wall Paper Association, testimony of president of, before Industrial Commission, 56

Western Exporters' Association, determine the producing capacity of each distillery, 6, 7

Western National Bank, in Morgan "chain" of banks, 54

Whisky and Oil Industries, pools in the, 5

Wholesale trade, competition in, restrained only by agreement or combination, 3; relations of American Steel and Wire Company with, 43; factor system in, 44; not averse to factor system, 47

Wire Nail Association, fix prices and allot output, 9; raise prices, 10

Wire Nail Pool of 1895, breaks the market, 77

UC SOUTHERN REGIONAL LIBRARY FACILITY
A 000 699 704 3